INDIA'S CONSTITUTION AT WORK

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by

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INDIA'S CONSTITUTION AT WORK

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With a Foreword by

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FOREWORD

THE Government of India Act of 1935 marks a definite milestone in the constitutional history of India. It came into operation on April 1, 1937, and Provincial Autonomy started functioning in all the provinces of India by the end of July, 1937. The Trustees of the Dadabhai Naoroji Memorial Prize Fund considered it most opportune to have a systematic study of its provisions made in the light of the experience gained of its actual working. They accordingly invited Dr. (now Sir) C. Y. Chintamani, Chief Editor of the *Leader* and a former Minister of the United Provinces Government, to write a thesis on the subject. Unfortunately, owing to serious illness, Sir Yajneshwar Chintamani expressed his inability to proceed with the work after having written the Introduction and eight chapters on the Federal Part of the Act. The Trustees, thereupon, invited Mr. M. R. Masani, B.A., LL.B. (London), Barrister-at-Law, to deal with the remaining part of the Act, viz., Provincial Autonomy.

Mr. Masani, who has been an active politician and is a keen student of Indian as well as International Politics, completed his work within the stipulated period of four months. He had the advantage of intimate contact with political developments and access to the best available information which enabled him to study every aspect of the working of Provincial Autonomy in detail.

It is a matter of common knowledge that the Government of India Act has two main aspects. Firstly, it envisages an all-India Federation consisting of Indian States and the autonomous Governors' Provinces on certain terms and conditions. Secondly, the Act confers autonomy on the British Indian Provinces. In the natural course of events Provincial Autonomy came into being first. On the other hand, Federation, for one reason or

another, was being postponed till the War broke out when it had to be suspended. Therefore, it is in the fitness of things that chapters on Provincial Autonomy should precede those on Federation. Thus there are two parts of the book, Part I (Chapters I to IX) on Provincial Autonomy by Mr. Masani—Part II (Chapters X to XVII) on Federation by Sir C. Y. Chintamani.

When the Trustees entrusted the work to Sir Yajneshwar Chintamani, they believed that it would be hailed as a valuable contribution to the political literature of India. Although Congress Ministries have resigned, on the score of principle, after 27 months of successful working in the eight Provinces, still, Provincial Autonomy is there. It is hoped that this publication will prove very useful at a time when the Government of India Act will have to be either revised or substituted by some other enactment in the near future.

KRISHNALAL M. JHAVERI,
Chairman of the Board of Trustees,
Dadabhai Naoroji Memorial
Prize Fund.

BOMBAY, *December 8, 1939.*

CONTENTS

INTRODUCTION

Earlier History

It will be convenient and may be useful to introduce a consideration of the provisions of the Government of India Act, 1935, by a relation of the events that led up to it. The Indian Councils Acts of 1861, 1892 and 1909 and the Government of India Act of 1919 preceded the latest Act. The earlier Acts were of restricted scope. The first three had reference only to legislative councils while the fourth was also concerned with the executive government. When first the Legislative Council of the Governor-General was established in the earlier part of the last century (1834), it was intended to be and in fact was a very small and an exclusively official body. And for a wonder, when the Act was amended in 1853, the Chief Justice of Bengal was one of its members ex officio. The Indian Councils Act of 1861 somewhat enlarged this official body by the inclusion in it of a few non-official members appointed by the Governor-General. Also, provincial legislative councils were brought into being in Madras, Bengal and Bombay, they too consisting only of appointed members, predominantly official and slightly unofficial. Organized unofficial Indian effort to bring about the expansion and reform of the legislature with elected members and with enlarged powers began ten years later. The British Indian Association, the Bengal National League and then the Indian Association in Bengal ; first the Bombay Association and next the Bombay Presidency Association in Bombay, and the Mahajana Sabha in Madras were the bodies which actively interested themselves in this and other political reforms. The first of provincial conferences intended to achieve the same end was held in Bengal in 1883. Then came the Indian National Congress two years later. The expansion and reform of legislative councils was the first plank in its platform. The Congress succeeded in getting indirect and partial support of the Viceroy, Lord Dufferin, and in enlisting the active sympathy of that great tribune of the people, the friend of every righteous cause, Charles Bradlaugh, who took the trouble of coming to India to attend the Bombay Congress of 1889. On going back Mr. Bradlaugh introduced a

Bill drafted on the lines of the Congress demand. But His Majesty's Government in England introduced their own Bill, known as Lord Cross's Indian Councils Bill—Lord Cross was the Secretary of State for India—and this became law in 1892. It was more disappointing than satisfactory. While it enlarged the size of the councils the increase was very far from being adequate. It introduced elected members into the councils but they were not 'elected' in the strict sense of the term; for they were persons nominated by the Governor-General or the Governor as the case might be on the recommendation of certain groups of local bodies acting through delegates, universities and chambers of commerce. The British Government were so touchy on the point that at least one Governor—Sir Arthur Havelock of Madras—deemed it necessary in a formal public utterance to correct the mistaken popular impression that any of the members was 'elected' by pointing out that they all were his nominees. A cynic might wonder whether His Excellency was anxious that the British Government in their relation to India should not acquire a false reputation for liberality or Liberalism! Members were allowed the right of interpellation but without the right of putting supplementary questions; so that any reply that was given on behalf of the Government[1]—full or inadequate, correct or misleading—had

1 At the Madras Congress of 1894 Mr. Eardley Norton said in support of his opinion that the reconstitution of the legislative councils was "practically a sham":

"In speaking of Madras let me give one or two illustrations only . . . of the methods adopted by persons in whose hands the destiny of the local legislative council lies. It seems to me . . . . that the Government of Madras has been seeking with some success to solve the problem of how best to thwart the efforts of our representatives to elicit information or to undo wrong. For this purpose the Government has arranged a system whereby, by a sub-division of labour, nothing useful shall follow the action of the elected members. In the first place we have the senior member of Council who, whenever a pertinent question is addressed to the Government, is put forward to assume the position of a nineteenth century Delphic Oracle and to make himself even more unintelligible than usual. When this gentleman has succeeded in this not over-difficult task, we have the junior member of Council, with his reputation for honesty, pushed forward to give a point-blank denial to statements which on investigation are discovered to be true. We have the flat contradiction followed up by the admission of the truth in the interval between that meeting and the next, in other words, we have the flat contradictions followed up by an admission of their own inaccuracy . . . ."

to be accepted without challenge or question. The annual financial budget was placed before the councils but only for general discussion. No motion of reduction could be made, no single item had to be voted upon. Members had not the right of initiating any discussion by means of resolution. Of course they were not allowed to move the adjournment for the discussion of matters of urgent importance. These limp councils dragged on for sixteen years. Meanwhile Indian public life was acquiring fresh strength. The Congress became increasingly popular and its activities were supplemented by provincial conferences and provincial associations. Valuable work was done in England, year in year out, by the British Committee of the Congress aided by the Indian Parliamentary Committee, of both of which Sir William Wedderburn was the indefatigable chief. There were, too, periodical delegations to England of some of the greatest leaders of the Congress. Of them all, the most valuable work was done by Mr. Gokhale. Fortunately for India there was a change of Government in England at the end of 1905 and a new Parliament with a big Liberal majority and John Morley was installed as His Majesty's principal Secretary of State for India in the place which, for nearly a dozen years, was occupied by politicians as hard-crusted as Sir Henry Fowler (afterwards Viscount Wolverhampton), Lord George Hamilton and Mr. St. John Brodrick (now the Earl of Midleton). There was also a change in the Viceroyalty, effected none too soon. After five years of Lord Elgin's namby-pambyism and seven years of Lord Curzon's brilliant blundering and wanton provocation, we had Lord Minto, a mild, elderly nobleman with no penchant for fireworks but with a strong desire to do quiet good. Thanks to the combination of Lords Morley and Minto and the effective persuasion and practical statesmanship of Mr. Gokhale, we had the Indian Councils Act of 1909. By this Act both Indian and provincial legislative councils were considerably enlarged with a substantial proportion of elected members strictly so-called. Except in Madras, however, the elections were still indirect. Non-official (not elected) majorities were allowed in the provincial legislatures.

The right of interpellation was extended by the member who put the original question being allowed to follow it up with supplementary questions. In addition to the general discussion of the budget, members were allowed to move reductions. These motions were voted upon, but the budget as a whole had not to be passed. Members were given the right of moving resolutions on administrative questions. There was still no recognition of the right of members to make motions of adjournment for the discussion of matters of urgent importance. It must be mentioned that for the first time separate communal electorates were introduced into the constitution and they increased communal tension while they strengthened the position of the Government. This was the dark spot of the Morley-Minto reforms. The official majority in the central legislature almost uniformly frustrated the efforts of reformers, while the non-official majorities in the provinces proved ineffectual due to a combination of the nominated element with the official *bloc* and the alliance with them of the representatives of communal electorates and vested interests. The result was as might have been expected. Public opinion ceased to be satisfied with these legislatures and public dissatisfaction increased steadily and even rapidly.

The War

Then came the war. British statesmen so spoke of justice, liberty and democracy and, in order to get the maximum of service from India, produced in the Indian mind such hopes of a new order as the result of the Allies' victory in the war that the national demand was naturally put up and there was great expectancy. Far from this being appeased, measures of repression that the Government had recourse to during the war, naturally increased discontent and the situation became more or less serious. Fortunately, however, a great reformer and passionate friend of India was appointed Secretary of State before the situation got quite out of hand. Edwin Samuel Montagu—it is to him I refer—staked his whole public career upon India. It was only because he was given the India Office that he consented to serve under Mr. Lloyd George although the allegiance of his heart was

always given to the magnanimous chief to whom he had owed his rise in public life, Mr. Asquith (afterwards the Earl of Oxford and Asquith). Mr. Montagu did not allow the grass to grow under his feet. He immediately took in hand the problem of Indian constitutional reform, which had already been under discussion between the Government of India and his predecessor in office (Mr., afterwards Sir Austen Chamberlain). He made the Declaration, on behalf of His Majesty's Government, of 20th August, 1917, that responsible government was the goal of British policy in India, and came over to the country after a couple of months. He received many deputations and addresses and spent months in consultations not only with the Government of India and Governors of provinces but with leaders of public opinion of every variety. The result was the Joint Report of 1918 followed by the Government of India Act of 1919.

The Montagu Reforms

The Joint Report of Mr. Montagu and Lord Chelmsford met with a mixed reception in India. In fact, opinion on its merits was divided so acutely that it became the proximate cause of the split in the Indian National Congress. Unfortunately the Government of India followed up their general approval of the report by detailed criticisms and suggestions which made the position of the supporters still more difficult. Due to this attitude of the Government of India, the Government of India Bill as it was introduced in the House of Commons was much less satisfactory than the Joint Report. Fortunately, however, evidence was led before the Joint Select Committee of the two Houses of Parliament to such effect that Mr. Montagu was able to persuade his colleagues to make recommendations of amendment which improved the position considerably. I am a Liberal but I write in no party sense and with no motive of party triumph when I say that weightiest evidence was given by the members of the Liberal delegation. Nor should I omit to mention the valuable services of an Indian Liberal, Lord Sinha, as a member of the Joint Committee in bringing about the liberalization of the Bill. The passing of the Act was signalized by a gracious Royal

Proclamation and the grant of amnesty to political prisoners. His late Majesty King George V, who was always genuinely solicitous of India's well-being and advancement, deputed his royal uncle, the venerable Duke of Connaught, very well known and respected in India as a liberal-minded Commander-in-Chief in Bombay, to inaugurate the Central Legislature constituted under the new Act. His Royal Highness was also the bearer of a message from His Majesty notable for its statement that he looked forward to India taking her place by the side of the dominions ; while the Duke himself rendered his speech memorable by a public expression of regret for the excesses of martial-law administration in the Punjab in 1919.

Unfortunately the Congress under Mahatma Gandhi's leadership went back in 1920 on its resolution of the preceding year to co-operate in the working of the Act and resolved upon non-co-operation ; the principal item of which was a boycott of the legislatures. Consequently the first elections under the new Act were held in circumstances of great difficulty and the new legislatures were deprived of the services of the most virile (if not the most thoughtful) elements in Indian public life. The Congress reversed its decision in 1923 and the second and third legislatures constituted under the Act included many and distinguished members of the Congress. But the Congress in 1930 went back to its earlier decision and so, the fourth and longest of the Montagu legislatures were again without a single Congress member.

I have mentioned this changing attitude of the Congress as it materially affected the spirit in which the bureaucracy worked the Act. In one word, it did not act in a spirit of co-operation with Indian reformers. It took the fullest advantage of the divisions in the ranks of Indian public men, political and communal, and to the farthest possible extent acted as it thought fit and without the slightest regard for Indian opinion. Repeatedly were Indian interests betrayed where British interests came in conflict with them. And Indian opinion was forced to feel its helplessness before the organized and determined might of the British bureaucracy.

It was most unfortunate for India that the great author of the Act was forced to leave the India Office a little more than a year after it came into force. His successors cannot exactly be described as born reformers—not until Mr. Wedgwood Benn functioned as Secretary of State for a little more than two years, nor since his resignation. Neither were the Viceroys so many Ripons. The majority of Governors were drawn from the Indian Civil Service, a body of permanent officials who have always made admirable administrators but who are rooted in a soil not congenial to the cultivation of the higher qualities of statesmanship. Not merely did the Congress non-co-operate or merely co-operate half-heartedly and without conviction, but three times during the period of the Montagu Act did it embark upon organized resistance to authority, first in the name of non-co-operation and next of civil disobedience. In answer the bureaucracy let loose the forces of repression, even so good a Viceroy as Lord Irwin (now Lord Halifax) not being able to avoid intensive repression. In the result, the strength of the bureaucracy increased at one end and the popular appeal of the Congress at the other. Liberals and other moderate elements in public life found themselves in the unenviable position of the proverbial earthen pot between two brass vessels.

While the Montagu Act was not inherently bad and would have achieved gratifying results in favourable circumstances, actually it failed because of the combined unwisdom of the high-tory bureaucracy and the ultra-radical or semi-revolutionary Congress. If the Congress had brought a different attitude to bear upon the working of the Act or if the bureaucracy had acted in a spirit of reasonable liberality, the Montagu Act would have achieved a fair measure of success while Indian public life would to-day be of a different complexion. The whole course of events between 1919 and 1937 brings to the mind two sayings more forcibly than any other—(1) "If nobody made any mistakes, there would be no politics"; (2) "See my boy, with how little wisdom the world is governed." A united body of Indian constitutional reformers acting with purposefulness

inside and outside the legislatures would not have failed to make a strong impression upon the British Government and their whole policy would necessarily have been very different from what it was.

It was the divisions in Indian public life, divisions political and divisions communal, which had the further effect of enabling the British Government to make the Government of India Act of 1935 as unsatisfactory as every section of Indian opinion pronounced it to be. Neither would the results of the first elections under the Act have been what they were, nor would communal differences be as acute as they unhappily are. "Action and reaction are equal and opposite" is not only a law of physics; it is also a law of politics. Nothing so predominates in politics as human nature—the reason why I for one always refuse to call it a science—and "responsive co-operation" (Mr. Tilak's historic phrase) is the law of human nature. The broad result of sixteen years' working of the Montagu Act, contrary to the intention as well as the expectation of its noble author and his supporters, was that things were very much where they had been before the introduction of the Act. What wonder that discontent increased in extent as well as in intensity? Add to this the adamantine refusal of the British Government to make any concessions to Indian opinion in the drawing of the Government of India Act of 1935, and we have a ready explanation of the astounding victory of the Congress in the recent elections followed by Congress Governments in no fewer than seven out of the eleven provinces of British India.

The description of the background of the new constitution is yet incomplete without a reference to the Statutory Commission and the three Round Table Conferences followed by the communal 'award,' the White Paper and the deliberations and the report of the Joint Select Committee on Sir Samuel Hoare's Bill. Dissatisfaction with the Act of 1919 and its working was not long in manifesting itself. In fact, it began almost as soon as the Act was brought into force. There was a resolution in the Legislative Assembly in the very first year. The result of three

years of agitation for a substantial advance was the Indian Reforms Enquiry Committee of 1924, commonly known as the Muddiman Committee after its chairman, the late Sir Alexander Muddiman, then Home Member in the Government of India. The Committee submitted two reports, the majority contenting themselves with recommendations of minor changes while the minority came to the conclusion that no changes within the framework of the Act would be adequate. The minority urged the appointment of an authoritative body to make recommendations for the revision of the Act itself. Not only did the minority's view not prevail, but even the majority's small recommendations were not carried into effect.

The Statutory Commission

The Act having provided for an inquiry by a statutory commission after the expiry of ten years from the time it was brought into force, the persistent opposition of Government both in India and England to an early inquiry settled Indian reformers in the belief that no commission would be appointed before 1929 at the earliest. But Lord Birkenhead, then Secretary of State for India, sprung a surprise upon the public by announcing in 1927 his intention immediately to constitute the Statutory Commission. The motive was obvious. It was more probable than not that two years later Labour would be in office and the Conservative Government did not care to take the risk of the Labour Party setting up the Commission and proceeding to legislate as they apprehended that they would go farther in meeting the Indian wishes than British interests counselled. India did not care to have a commission at that juncture, but when did India's wishes prevail ? Not only was the Commission set up by special Act of Parliament, but care was taken to exclude from it Indians *qua* Indians. And this insult and injustice was defended in speeches still more galling to the self-respect of Indians. India's answer was an organized boycott of the Commission, known to fame as the Simon Commission after its chairman, the whilom Liberal Sir John Simon. While the Liberals took the lead in the decision of boycott, Congressmen as usual went one better and organized hostile

demonstrations at every place visited by the Commission. They came into conflict with the police and many were the regrettable incidents that attended the march of the Commission from place to place. The tragic death of Lala Lajpat Rai is still believed to have been at least hastened by the police assaults on him at Lahore. The Commission's Report itself proved to be a singularly disappointing document ; so much so that the always courteous, moderate and judicial Sir Sivaswamy Aiyer dismissed it with the remark that it should be thrown on the scrap-heap.

The Round Table Conference

Lord Irwin was originally a supporter of the exclusion of Indians from the Commission. But being a righteous man and wise statesman and having the advantage of being on the spot, he studied the situation and went to England strongly to urge the setting up of a round table conference of the representatives of the two countries to meet as equals and recommend to His Majesty's Government what should be the new constitution to India. The Round Table Conference was announced on 31st October, 1929, and was greeted with expressions of genuine satisfaction by all sections of Indian opinion except the Congress. But at least some of the leading members of the Congress were first willing to give a chance to the Conference. Unfortunately other counsels prevailed later and they refused to have anything to do with it except on their terms, which the British Government felt they could not concede. The composition of the Round Table Conference was much less satisfactory than it might easily have been. And its results—I am here referring to the first Conference—while not wholly unsatisfactory, might have been carried farther in the direction of India's requirements and Indian's wishes. The most notable feature of the Conference was that the new constitution should be federal and the federation should include provinces as well as states. The Indian princes who were members of the Conference surprised every one agreeably when, through their spokesman His Highness the Maharaja of Bikaner, they announced their decision to join an all-India federation on condition that their

status was not jeopardized and on the further condition that they would federate with a responsible government and not with the Government of India as constituted. Notwithstanding many a dark moment and any number of disappointments, the first Conference concluded on a note of success and of hope. For this the credit must be given, first to its chairman, Mr. Ramsay MacDonald, and next to Lord Reading, the leader of the British Liberal Delegation, alas ! both of them since passed away. The Conference was followed by the release of political prisoners in India and by what is known as the Irwin-Gandhi Pact. The result was that the Congress participated in the second Round Table Conference (1931) through its supreme leader, Mahatma Gandhi, but by the time the second Conference assembled, the Labour Government ceased to be and was succeeded by a so-called ' National ' Government of which, though Mr. Ramsay MacDonald continued to be the nominal head, the Conservative Party was the dominant partner. And good Mr. Wedgwood Benn, always liberal and always just-minded, was succeeded at the India Office by Sir Samuel Hoare, a politician of a very different type. Extremely able, he was still more obdurate and he gave no inch of ground to Indian reformers. The second Conference, more disappointing in every respect than the first, eventually broke down on the communal issue. The failure of the representatives of the several communities to reach an agreement was followed by what was called the Minorities' Pact, the secret history of which, as told by Sir Edward Benthall from first-hand knowledge, made an ugly reading. A truncated third Conference was held in the following year (1932) and its results were still more disappointing.

The communal ' award ' announced by Mr. Ramsay MacDonald embodied the decision of the British Government and it has ever since proved to be a veritable apple of discord. The decisions of His Majesty's Government were embodied in what was called the White Paper, and it produced dismay in the Indian mind. This in its turn, was followed by the introduction of Sir Samuel

The White Paper

Hoare's Bill and the Joint Select Committee of the two Houses of Parliament to report upon it. Indian 'delegates' were appointed by the Government to take part in the examination of witnesses before the Committee. They had no part or lot in the deliberations of the Committee and the British *alone* were responsible for the recommendations embodied in its report. It is utterly incorrect to say, as the British apologists of the new constitution have shown a repeated fondness for saying, that the report embodied the results of joint deliberation between the British and the Indians. The Indian 'delegates' presented to the Committee two memoranda in which they stated the very minimum of changes in the Bill which would satisfy any section of Indian opinion. But it was all love's labour lost. Not a solitary recommendation made by the Indian 'delegates' proved acceptable to the British. The Joint Select Committee achieved almost a miracle by making the White Paper scheme still worse—an amazing feat indeed. And the Bill in its passage in Parliament underwent further changes for the worse, all to satisfy British die-hardism. Indian opinion was almost stunned by the result of years of agitation and cogitation and many sections of it, including the Liberal, felt and said that it would have been far better if no reform had been attempted. It was in such a situation, when the public temper was as described above, that the elections were held at the beginning of 1937.

The Joint Select Committee

C. Y. C.

PART ONE

BY

M. R. MASANI

CHAPTER I

Provincial Autonomy

IT is over two years now that the part of the new Constitution which is known popularly as Provincial Autonomy has been functioning. It is possible, in consequence, not only to review the provisions of the Act in this connection but also to examine how, in the period that has already elapsed, the constitutional machinery has worked.

At the outset, the meaning which the term 'Provincial Autonomy' has come to bear in common parlance in India needs to be considered. In the popular mind, Provincial Autonomy has two ingredients : (*a*) freedom from outside control or interference and (*b*) a government responsible to a popularly elected legislature.

These two requirements, which are generally lumped together, are in fact two distinct things and are by no means necessarily co-existent. While, undoubtedly, responsibility of a Provincial Government to the representatives of the people of the Province is impossible in the absence of autonomy or freedom from outside interference, the converse is by no means true. The executive of an autonomous unit in a federation, as indeed of a sovereign independent State, may be a personal autocracy, a totalitarian dictatorship, an oligarchy, a bureaucracy, a parliamentary democracy or a soviet. It is, however, in the extended and loose sense of the term in which it includes responsible government that we shall refer to Provincial Autonomy hereafter.

The very first question that arises is whether the Government of India Act of 1935 does in fact establish Provincial Autonomy in the sense of real autonomy, though within stated limits, and of responsible government in the entire autonomous field.

The answer to this question must, in brief, be that while the Act of 1935 does mark a new departure in certain respects and undoubtedly constitutes an advance both from the point of view of autonomy from the dominance of the Government of

India and of responsibility to a popular legislature, neither autonomy nor responsibility can yet be said to be real.

The encroachments on both are so far-reaching that their cumulative effect is to reduce popular government to a frail product whose continued existence is dependent on the good-will and tolerance of agencies and forces beyond the provincial boundaries, geographical as well as political. What the new Constitution does, in fact, is to take some steps forward in a direction which is dictated, as the report of the Joint Parliamentary Committee on the Government of India Bill concedes, " by the inexorable force of events " and which was indicated as far back as 1919 in the Montagu-Chelmsford Report :

> " The provinces are the domain in which the earlier steps towards the progressive realization of responsible government should be taken."

The step forward embodied in the Act of 1935 was two-fold: the constitution for the first time of a field of *exclusive* jurisdiction for the Provincial Government and Legislature; and the removal of the barriers between subjects ' transferred ' to responsible government and those ' reserved ' from such responsibility, which we have known as Dyarchy.

So far as the first change is concerned, it must not be overlooked that the Act of 1919, along with the Devolution Rules, did label certain fields of action and legislation as ' provincial subjects ' but, even as regards these, the Central Government retained concurrent powers of legislation while for the rest the Provincial Government was nothing better than a subordinate office for carrying out the orders of the Government of India. To the extent that the Act of 1935 creates a field of exclusive jurisdiction for the Provincial Executive and Legislature, it marks a distinct stage, though we may, with greater restraint than that displayed by the Joint Parliamentary Committee, desist from describing it as a ' fundamental departure.'

The end of Dyarchy and the transfer to popular government of all departments in the autonomous sphere also undeniably

marks a forward step. There was a great deal of hesitancy on the part of the bureaucracy and British vested interests in parting with the departments of Finance and of what is compendiously known as Law and Order. The after-effects of that nervousness we shall see when we scrutinize more closely the provisions of the Act.

Having indicated briefly the nature of the advance made by the Constitution of 1935 on the old position, we might now glance at the other side of the medal in order to assess how far the Constitution still leaves us from real autonomous and responsible government.

The limitations on Autonomy are manifold. There is, first, the power of the Federal Legislature to impose duties upon a Provincial Government or its officers for the administration of Federal Law as an alternative to securing that purpose through its own officers or by agreement with the Provincial Government. Then, there is the provision that the Governor is an agent of the Governor-General and is in duty bound to carry out his behests, even when doing so may necessitate flouting his own Ministers.

But more pervasive than all this is the fact that, on all the occasions and in all the matters in which the Governor acts in his discretion or in his individual judgment, he does so under the supervision of the Governor-General.

This brings us to the topic of the Governor's discretionary powers and special responsibilities which eat into the very vitals of responsible government and which have been the bone of so much contention. So all-embracing are these reserve powers or safeguards that they cover the entire field of administration and legislation. It was none else than Sir Samuel Hoare who described them as " duties imposed upon the Governors that cover the whole field of administration."

Any attempt even to enumerate these limitations to Provincial Autonomy and responsible government would be incomplete which did not first consider how the ambit of Provincial Government is defined and the entire field divided between the Federation on the one hand and the Provinces on the other.

Before we do that, however, let us for a moment have a look at the new political map of India and see the sort of provinces into which it is divided, because both from the point of view of Federation and of responsible government the nature and composition of the provincial units have considerable significance.

The Act of 1935 carved 'British' India into eleven provinces, two of which, Sind and Orissa, were newly created. The North-West Frontier Province has only recently been 'promoted' to the dignity of a Governor's Province.

A unit of government, particularly a unit which forms part of a federation, is expected to satisfy certain tests which are difficult to specify, but which may be tersely described as a homogeneity based on common language, common race and common culture. The Indian provinces are unfortunately based on no such principle of demarcation—either linguistic, ethnological or cultural. Administrative considerations were historically their only basis. The result is that most of them are artificial units, heterogeneous conglomerations of diverse peoples.

> "We cannot regard the present provinces as in any way ideal areas for self-government," the Simon Commission had written, describing them as "a number of administrative areas which have grown up almost haphazard as the result of conquest, supersession of former rulers or administrative conquest. No one of them has been deliberately formed with a view to its suitability as a self-governing unit within a federated whole."

Bombay Presidency has, even after the separation of Sind, got three main distinct groups—Gujerati, Marathi and Karnataki. Madras Presidency is a combination of Tamil, Telugu (Andhra), Malayali (Malabar), Kanarese and Tulu speaking people. Central Provinces and Berar is split between Hindusthani and Marathi. Bihar has within its bounds a distinct unit in Chhota Nagpur, which has recently been talking of 'separation.' Assam includes predominantly Bengali parts like Sylhet and parts of Cilchar and Goalpura, while the Bengali-speaking

population of the province claims to be bigger than the Assamese-speaking !

While provinces thus include more than one racial or linguistic group, in some cases such groups are themselves rent between two provinces, e.g., the Marathi-speaking, between Bombay and Berar and the Karnatakis between Bombay and Madras.

These artificial boundary lines have led to agitation in several cases for a revision of provincial boundaries on more scientific lines.

The constitutional outlet provided for such aspirations is to be found in Section 290 of the Act, which authorizes the creation of new provinces and the alteration of the boundaries of existing provinces by a resort to Orders-in-Council. Before such a step is taken, however, the views of the Federal Government and Legislature and of the Government and Legislatures of the provinces concerned should be ascertained.

There is no intention on the part of the British Government to use that power in the near future, if the statement of the Under-Secretary of State for India in the House of Commons some time in 1938 that the British Government had no intention of creating more provinces is any indication.

The attitude of the Congress to the demands for new provinces was indicated when the Working Committee passed a resolution on 25th July, 1938, " assuring the people of Andhra, Karnatak and Kerala that the constitution of separate provinces on a linguistic basis would be undertaken as part of the future scheme of the Government of India as soon as the Congress has the power to do so, and calling upon them meanwhile to desist from further agitation in this behalf " in order that attention may not be diverted from the main duty of winning *Purna Swaraj*. It may be we shall hear more of this matter, for report has it that the Madras Ministry has urged the creation of a separate province of Andhra and that the Secretary of State has turned down the proposal.

While linguistic provinces are no doubt a sound objective, the fact remains that there will always be small minority groups in even the best-demarcated provinces which are alien to the bulk of the people in language, race or culture. For such, the best safeguard is the goodwill of the mass of the people. The requirement of domicile certificates from Bengalis in Bihar is a case in point. It has been argued, hitherto unsuccessfully, that such a policy runs counter to the provisions of Section 298 of the Act. The Bihari-Bengali controversy is an unfortunate illustration of the coming true of the fear that Provincial Autonomy would divert the attention of the people from the real issue of political freedom and economic emancipation to futile internal and inter-provincial jealousies and dissensions.

This brings us to the question as to whether Provincial Autonomy is a good thing—a step forward to a free and united India—or a device which acts as a dividing and disintegrating force in regard to the weak yet growing national unity of the Indian people.

The answer to this question must very largely be a matter of individual opinion. All that we need say at this stage is that even the framers of the scheme—however honest may have been their motives—were not quite unaware of the dangers inherent in their plans.

Thus in paragraph 26 of their report the Joint Parliamentary Committee write :

> " We have spoken of unity as perhaps the greatest gift which British rule has conferred on India ; but, in transferring so many of the powers of government to the provinces and in encouraging them to develop a vigorous and independent political life of their own, we have been running the risk of weakening or even destroying that unity."

And then, in paragraph 30, by way of self-justification, they add :

> " A completely united Indian polity cannot, it is true, be established either now or, so far as human foresight can extend, at any time."

So far as opposition to the continuance of foreign rule in India is concerned, the effect of Autonomy has been to make it very difficult for all the provinces to " be excited about the same thing at the same time."

A good example of this is supplied by the recent hunger-strike of politicals in Bengal jails. In the old days, the refusal to release a number of political prisoners such as these would have meant an agitation throughout India.

With Provincial Autonomy, however, the attitude of the Bengal Ministry which, whatever its nature, does after all possess a majority in the Legislature and must thus be presumed to enjoy the confidence of the electorate, becomes decisive.

The suggestion that Congress Ministries in other provinces should bring pressure on the Bengal Government through the Government of India by threatening to resign if the politicals were not released is vitiated by the taint that any such approach would mean asking the Governor-General to use those same powers to overrule the responsible Ministry in Bengal which, when used by him in Bihar and United Provinces in 1938, were made a *casus belli* by the Congress and involved the resignation of the two cabinets.

The only contribution that could be made by other provinces was therefore to let the Bengal Ministry know that, in case they desired to release the prisoners and were being obstructed by the Governor or the Governor-General, Congress Ministries would be prepared to resign with them—an offer which the Bengal Ministers completely ignored !

CHAPTER II

The Ambit of Autonomy

EVERY constitution for a Federal State has to provide some means for demarcating the sphere of activity of the Federal Government and Legislature from that allotted to the federating units. Some federal constitutions, such as those of the United States of America and Australia, have a list of federal functions, the entire residue being left to the states. The constitution of the Dominion of Canada, on the other hand, prescribes subjects for both provincial and dominion control, the residuary powers remaining with the Dominion.

The Act of 1935, however, adopts a method which, as is admitted by the Joint Parliamentary Committee in its report, is ' without precedent.'

The Seventh Schedule to the Act contains three legislative lists—the Federal, the Provincial and the Concurrent. The first two fall exclusively within the competence of the Federal and of the Provincial Legislatures respectively, while both are competent to deal with matters covered by List III. An attempt is thus made to parcel out the entire field of legislation and to obviate the necessity for giving residuary powers to either the federation or its units.

Explaining the adoption of this device, Sir Samuel Hoare claimed during the Committee stage of the Bill that this method had been adopted in preference to a more logical method owing to the sharp cleavage of opinion between Hindus and Moslems:

> " If it had been possible to have one list we should have been glad, but unfortunately, as in many of these Indian problems, when we came to the actual facts what we desired we found to be impossible. We found that Indian opinion was very definitely divided between, speaking generally, the Hindus who wish to keep the predominant power in the Centre and the Moslems who wish to keep the predominant power in the Provinces. The

extent of that feeling made each of these communities look with the greatest suspicion at the residuary field, the Hindus demanding that the residuary field should remain with the Centre and the Moslems equally strongly demanding that the residuary field should remain with the Provinces. My Honourable Friend will believe me when I say that the feeling was very deep and very bitter on this issue. We tried year after year not only in the Joint Select Committee but in the various Round Table Conferences to bridge the difference, but the only bridge that we could find between these two diametrically opposite points of view was to have three lists, namely, the Federal List, the Provincial List and the Concurrent List, each as exhaustive as we could make it, so exhaustive as to leave little or nothing for the residuary field. I believe that we have succeeded in that attempt and that all that is likely to go into the residuary field are perhaps some quite unknown spheres of activity that neither my Honourable Friend nor I can contemplate at this moment. We find that we have really exhausted the ordinary activities of government in the three other fields. I agree with my Honourable Friend that it means complications. I believe that it also means the possibility of increased litigation." (House of Commons Reports, 27th March, 1935.)

Whether or not the plea made by Sir Samuel Hoare merits acceptance, the fact remains that even his solicitude for the feelings of Hindus and Moslems could not devise lists which would leave no residue whatsoever.

The Act recognizes this, because Section 104 gives the Governor-General in his discretion the right to empower either the Federal or the Provincial Legislature to enact legislation (including that involving taxation) regarding a matter not enumerated in any of the lists in the Seventh Schedule.

"We are conscious," stated the Joint Parliamentary Committee in their report, "of the objections to this proposal. It is inconsistent with our desire to see a statutory

> delimitation of legislative jurisdictions, and the powers vested in the Governor-General necessarily empower him not merely to allocate an unenumerated subject, but also, in so doing, to determine conclusively that a given legislative project is not in fact covered by the enumeration as it stands, a question which might well be open to argument, though we assume that in practice the Governor-General would seek an advisory opinion from the Federal Court."

The Provincial List includes public order, the administration of justice, courts of law, police, prisons, provincial public services, local government, public health, education, communications (except railways), water-supply and irrigation, agriculture, land and land tenures, trade and commerce within the province, the production, supply and distribution of goods, intoxicating liquors, unemployment, charities, theatres, betting and gambling.

In addition, the following among other heads of taxation fall within the provincial sphere—land revenue, excise on liquor and opium, taxes on agricultural income and on lands and buildings, taxes on succession to land, taxes on mineral rights, taxes on professions, on the sale of goods, on luxuries and entertainments, stamp duty on certain documents and tolls.

In addition, the Concurrent List gives power to the provinces to legislate regarding criminal law (including the Indian Penal Code), criminal procedure, civil procedure, marriage and divorce, infants and minors, wills and succession, transfer of property, trusts, contracts, arbitration, insolvency, stamp duties, legal, medical and other professions, newspapers, factories, labour, trade unions, electricity, inland navigation and cinema censorship.

Among matters entirely outside the reach of the provinces are such items as the military forces, defence, external affairs, ecclesiastical affairs, currency, posts and telegraphs, census, foreigners, import and export, shipping, aircraft, copyright, cheques, arms and explosives, opium, petroleum, trading corporations, insurance, banking, customs duties, excise on

tobacco and some other articles, corporation tax, salt tax, income-tax, succession duties and capital levies.

The question arises as to how it is to be decided in case of doubt or dispute whether a particular enactment or a provision in an enactment does or does not fall within the province of a particular legislature. Or it may be that two legislatures enact inconsistent provisions on one and the same point. Obviously, this is a matter for decision by the courts of law, with the Federal Court and the Privy Council as the final arbiters.

In respect of matters in the Concurrent List, however, the Act itself makes provision for the resolution of such a conflict. Ordinarily, the Federal law is to prevail and the provincial law to be void to the extent of the repugnancy. Where, however, the provincial law which conflicts with a Federal law was reserved for the consideration of the Governor-General or the King-Emperor and has received the assent of either, the provincial law is to prevail. Even so, the Federal Legislature is free to enact further legislation on the point, provided it does so with the sanction of the Governor-General in his discretion.

It will thus be seen that in the ambit of the Concurrent List as of the residuary subjects, the Governor-General is made the real arbiter as to whether the will of the Federal or the Provincial Legislature is to prevail on any particular point.

While this is the normal distribution of legislative territory between the Federation and the Province, there are at least two processes which enable the Federal Legislature to legislate even on provincial subjects.

The first is when the legislatures of two or more provinces invite the Federal Legislature to function in connection with any particular provincial subject (Section 103). This, of course, constitutes no infringement of the autonomy of the province.

The other process is, however, of a very different nature. The Act gives authority to the Governor-General in his discretion to declare by ' Proclamation of Emergency ' that a

grave emergency exists whereby the security of India is threatened, whether by war or by internal disturbance (Section 102). During the existence of such a Proclamation (which may not last beyond six months except with the approval of both Houses of Parliament), the Federal Legislature has power to make laws for a province even in respect of matters in the Provincial Legislative List and any provision of law of the provincial legislature which is repugnant to such a federal measure is void. Such Federal Acts are to cease to be operative six months after the expiry of the Proclamation. This is an overriding power not to be found in any Federal constitution and is a vital encroachment on Autonomy.

While, however, interference with Provincial Autonomy in the sphere of legislation is sanctioned only in the event of emergency, in the field of administration interference is chronic in the most normal of times. The occasion for it may arise in various ways.

For one thing, Federal laws have to be administered in the provinces. One way of securing this is for the Federal Government to function directly through its own officers posted in the provinces. This may be rather an expensive process and no doubt the assistance of Provincial Governments may be invited for the purpose. But the Act goes much further. It makes it *obligatory* on the provincial units in certain cases to give effect to Federal laws, even should they be unwilling to do so. Thus, it is provided that the executive authority of the province should be so exercised as to ensure respect for Federal laws (Section 122).

In case this general exhortation does not suffice, it is specified (Section 124(2)) that the Federal Government may confer powers and impose duties on provinces or their officers, though the subject-matter of the legislation may be beyond the provincial purview, while as regards matters falling within Part II of the list of Concurrent Legislative Subjects, a similar right to give directions regarding the administration of a Federal Act

is also given (Section 126(2)). But a distinction is drawn between the two classes of legislation. The latter section deals with matters which are predominantly of provincial concern and, in order that there may not be any unreasonable usurpation by the Federal Legislature of the provincial field of action, a safeguard is provided by the proviso that the previous sanction of the Governor-General in his discretion is required for such legislation.

Finally, in case the Governor-General feels that such *directions* are being ignored, he may in his discretion issue *orders* to the Governor which will be final and binding (Section 126(4)).

Powers as wide and arbitrary are given for making the Provincial Governments carry on the executive functions of the Federal Government. Where the Federal and the Provincial Ministries differ, the Governor-General is in his discretion empowered to order the Governor to overrule his Ministers.

To start with, the consent of the Government of a province may be secured to entrust to it functions regarding any matter within the executive authority of the Federation (Section 124(1)). So far, so good. But if consent is not forthcoming, there is always compulsion. Thus, the Governor-General may direct the Governor in his discretion to act as his agent regarding tribal areas and regarding defence, external affairs and ecclesiastical affairs (Section 123). For the rest, the executive authority of a province should be so exercised as not to prejudice the exercise of the executive authority of the Federation and the executive authority of the latter extends to giving such directions to the province as it may think necessary for the purpose.

If *directions* are not heeded, the Governor-General may in his discretion issue *orders* to the Governor (Section 126(4)).

Finally, and most comprehensive of all, there is the provision, which has been already the cause of a first-class constitutional crisis in this country over the United Provinces and

Bihar resignations, that the Governor-General in his discretion may at any time issue orders to the Governor as to the manner in which the executive authority of the province is to be exercised for preventing a grave menace to the peace and tranquillity of India or any part thereof (Section 126(5)). This provision is evidently intended to operate in cases where Section 54 would not work, e.g., where the peace of one province is endangered by developments in another province.

Let us envisage a possible situation where such orders may be given to a Governor of a province. Recently, Dr. Rammanohar Lohia was prosecuted in Calcutta for an alleged breach of Section 124A of the Indian Penal Code (Sedition) by reason of an anti-war speech delivered by him when in Calcutta. Being in Calcutta when the Bengal Government launched on the prosecution, Dr. Lohia stood his trial and was acquitted. Now, suppose he had been in his home province of the United Provinces at the time and a warrant had been sent down by the Bengal Government for execution by the United Provinces police.

It is problematic whether Pandit Govind Ballabh Pant would have taken objection to Lohia's 'extradition'—if one may import a term from international law—on the ground that since resistance to war was the policy of the Congress itself and since Lohia had only preached that policy, his prosecution in the United Provinces, and therefore his extradition from the United Provinces, was unthinkable.

Supposing he had done his duty as a Congress Premier, what would have ensued? The Governor of the United Provinces would certainly not have been within his rights in overruling the Ministry by virtue of Section 52(1). The matter would have been referred to the Governor-General who could, if he was prepared for the resignation of the United Provinces Ministry, have given orders to the Governor on the strength of Section 126(5) to effect Dr. Lohia's arrest and transfer to Bengal, orders to which the Governor, in disregard of the Ministry, would have been bound to give effect.

To such an attitude, exception might have been taken on the ground that the ' peace and tranquillity ' of Bengal would hardly have been undermined by further visits from Dr. Lohia. On the other hand, the Governor-General, as we shall see later, used this very section in February, 1938, with about as little excuse.

Indeed, knowing from past experience how hard the words ' peace and tranquillity ' have been ridden by Governors-General, one is left to wonder what would be left of Provincial Autonomy after the cumulative effect of all the provisions mentioned above had made itself felt.

Writing of Section 126 of the Act in his *Constitutional History of India,* Professor A. Berriedale Keith describes it as " a very striking derogation from provincial autonomy " and he observes that "as the judge of the necessity of directions is the federation, conflict may result." He also describes it as " a power which might be so exercised as to have far-reaching effects on provincial autonomy."

From what can be gathered, however, there has in the last two years been singularly little in the way of friction or clash between the Central and the Provincial Governments. Considering the numerous points of contact, this is all the more notable and testifies to a desire on all sides to avoid coming to grips.

There are many problems which affect both the Central and the Provincial Governments and we shall touch on some of these when we deal with the Conference of Home Ministers at Simla on 25th, 26th and 27th May, 1939. Some instances of matters in dispute may, however, be mentioned at this stage.

On 5th August, 1939, for instance, a cryptic message appeared in the Press that Mr. Rajagopalachar, the Madras Premier, had, in reply to a question in the Madras Legislative Assembly, revealed that the Government of India had turned down the proposal of the Madras Government for the abolition, on

grounds of principle and administrative convenience, of the Central Criminal Intelligence Department working in the province.

Now, behind this terse answer lies a very interesting story. It throws for the first time a little light on what has undoubtedly been a sore point with Ministers in many provinces.

It is true that the Central Intelligence service was introduced before the inauguration of the new Constitution, but it acquired new political significance as a result of the constitutional changes. So long as the Provincial Governments were no more than the subordinate arms of the Imperial Government, there was homogeneity and adaptability and no difficulties arose. With popular governments—and in many cases with Ministries manned by Congressmen who had spent the greater part of their lives being 'agin' the law'—the situation underwent a radical change. This unimportant detail of police administration acquired a certain political significance.

Section 126(5) of the Act lays on the Governor-General the responsibility of issuing directions to the Governor of a province as to the way in which the executive authority of the province should be exercised for preventing any grave menace to peace and tranquillity. It was felt that in order to enable the Governor-General to discharge this responsibility he should be able to obtain information independently of the Provincial Government through a cadre of Central Intelligence officers in the provinces. In plain English, with the transfer of the control of the Provincial Intelligence Departments to popular Ministers, the British authorities seem to have felt the need for an agency which would make good whatever deficiencies or inadequacies might in certain cases make themselves felt. Hence it is that in Item I of the Federal Legislative List is to be found the head of the 'Central Intelligence Bureau.'

The question arises: What do these Central Intelligence officers in the provinces do and how has the arrangement worked?

The cadre of the Central Intelligence Bureau in a province does not appear to be very formidable. It consists generally of an officer of the Imperial Police Service, with two or three subordinate officials to assist him. Their work, apparently, is to report to the Central Intelligence Bureau on the general political situation in the province, the movements and activities of figures of all-India interest, the smuggling of arms and the movements of undesirable foreigners.

The mode of work of these officers is to report direct to the Central Bureau, over the heads—or behind the backs—of the Provincial Governments. In return, the Central Intelligence Bureau seek to put the Provincial Ministers in good humour by providing them with an occasional report on the Labour movement or the Communist movement.

The system in question is, in fact, a very truncated form of what the Government of India would have liked. Their suggestion for a *locus standi* in the provinces for the Federal Government in matters pertaining to Law and Order having found no response in the report of the Joint Parliamentary Committee and in the draft Bill, the Government of India started moving as early as March, 1935. Paragraph 97 of the Joint Parliamentary Committee Report had conceded that while the Central Intelligence Bureau would have to rely, as then, mainly on information supplied by Provincial Intelligence Departments, the Governor-General should, on the strength of information independently obtained, be in a position to point out to the Governor any shortcomings in the working of the Provincial Intelligence Department and to give directions which he would be competent to give. Building on this, the system was put in trim before the new Ministries came into existence.

Almost immediately after the Congress took office, there was a conference at Simla of heads of Criminal Investigation Departments to promote efficient co-operation between the C.I.D. in the provinces and at the Centre.

Among the problems this conference dealt with was, it appears, that of a certain amount of uncertainty in the method of circulating intelligence between different provinces which seemed to have resulted in the drying up of the inter-provincial flow of intelligence. The effects generally of the constitutional changes inaugurated on 1st April, 1937, were also considered.

There appears to be a certain amount of soreness on the part of the Provincial Ministries, particularly those manned by Congressmen, at what they consider to be ' spies ' of the British Government being let loose in their midst. How do the Ministers know they themselves are not the objects of espionage ? What must aggravate their annoyance is that these officers are often chosen from the cadres of the police in their own province. The Ministries are free, of course, to refuse to loan the services of their officers for the purpose to the Government of India. In that event, the Central Government would probably post officers from other more accommodating provinces in such a province. In any event, the Central Government does not feel itself in any way bound to consult the Provincial Government regarding such postings any more than in the case of posting officers of other Central Departments, such as Posts and Telegraphs or Income-tax.

Another question of much less importance has been a somewhat ticklish question of etiquette arising out of the posting of Central officials in the provinces. What should be the attitude of such officials towards the powers-that-be of the province ? Some time in October, 1937, the Government of India thought it necessary to issue instructions to their officers that the seniormost Central officer should in each case call on a Minister when in the same station. It seems that the question has been asked whether this order applied to Army officers. In other words : Is the Army a Central Department ? The answer is : Yes, and No. It is certainly a Central as opposed to a Provincial service. On the other hand, it has the King's Regulations to govern its discipline. These do not yet know of Provincial Ministers. So Army men, it seems, need not call on Ministers !

One of the issues which is liable to arise between the Central and Provincial Governments is regarding developments in the Indian States, whose peoples are awakening from their age-old stupor and are attempting to catch up with their more fortunate neighbours in the 'autonomous' provinces.

It appears that the tragic plight of the oppressed peoples of States such as Dhenkenal and Talcher in Orissa has more than once moved the sympathetic Congress Cabinet in Orissa to intervene with the Government of India, which really controls the situation through its Political Department. Gandhiji once advised the entire population of a small Orissa State to migrate to provincial territory and declared that the Orissa Ministry should provide for them. In fact, large-scale migration has been taking place and early in 1939, it appears, the question of permitting the extradition of some of the refugees also arose. It is reported that the problem of the Orissa States was one of the points covered in discussions between the Orissa Ministers and the Viceroy during his recent visit to Orissa in August, 1939.

The major State of Hyderabad has also been creating problems for its neighbours. Its attitude towards Civil Liberties and its methods of dealing with agitation and *satyagraha* prior to the announcement of certain constitutional reforms caused widespread concern among the people of Bombay and of the Central Provinces and Berar.

There were persistent reports that the Hyderabad State authorities had been pressing the Bombay Ministry to put an end to the Press campaign against the State in the province and to the inflow of volunteers into the State for participating in *satyagraha*.

Speaking in the Bombay Legislative Assembly, Mr. K. M. Munshi, the Home Minister, declared that the Bombay Government would not allow newspapers in the Presidency to carry on a campaign for the overthrow of the Nizam and his dynasty or to create inter-communal discord. At the same time, said Mr. Munshi, the Government would concede to the Press the

same liberty of criticising the administration of Hyderabad State which it enjoyed regarding the Bombay Government's administration. Nor would Government, added the Home Minister, stop persons proceeding to Hyderabad territory " with the intention which, if carried out there, might amount to a breach of the Hyderabad State laws."

Considering that hardly any newspaper was carrying on a campaign for overthrowing the Nizam's rule, the Hyderabad Government seems to have got little change out of the Bombay Ministry.

The people of the Central Provinces and Berar were even more agitated by the repression rampant in Hyderabad State. Public opinion was insistent in its demand that the Congress Cabinet there should intervene. It appears that, in response to the strong popular feeling, the Council of Ministers made a representation to the Viceroy as Crown Representative pointing out how the further growth of the Arya Samaj *satyagraha*, which accounted for the greater part of the 8,000 *satyagrahis* in Hyderabad jails, was bound to create a grave situation throughout a large part of India, including the Central Provinces and Berar, Bombay, United Provinces and the Punjab. The Central Provinces Cabinet seem to have made out a strong case for speedy intervention by the Paramount Power—which could not escape the responsibility for ensuring the existence of a minimum of civil, religious and cultural liberty in a State it protects—before the position deteriorated any further. An appeal was made to the Crown Representative to take such steps as would end this source of infection for surrounding provinces.

For the student of the Constitution, there is, apart from the contents of such a representation, the further point of interest that the Council of Ministers functioned *as such* and not as the Government of the Central Provinces and Berar. Obviously, the differential factor is the Governor, who may have refused to join in making the representation. It appears that the Cabinets in the Congress provinces acted as Councils of

Ministers in making protests to the British Government against the proposed amendments to the Government of India Act (for further truncating Provincial Autonomy in the event of war) which are now before Parliament. On the other hand, when in November, 1938, Sardar Vallabbhai Patel, as President of the Parliamentary Sub-Committee, asked Provincial Ministers to back the attitude of the Congress Party in the Indian Legislative Assembly on a certain Bill, it was the Provincial *Governments* that wired their views to the Government of India and not the Councils of Ministers.

Developments in the States were, in fact, responsible for an intimation by no less than eight Provincial Ministries of their inability to continue in office if the British Government did not intervene in the affairs of Rajkot State. This sensational *dénouement* was caused by the fast on which Gandhiji felt impelled to embark on the eve of the Tripuri Congress session in consequence of a flagrant breach of faith on the part of the Thakore of Rajkot. The Viceroy intervened and it was made possible for Gandhiji to terminate his fast and for the Congress Ministers to continue in office.

In recent months, the thickening international situation and the near approach of war have tended to create fresh complications in the relations of the Centre with the Provinces.

The British Government have thought it necessary to arm the Government of India with greater powers to give effect to its policies in the provinces in time of war and amendments to the Government of India Act giving the Central Government still more dictatorial powers in time of war are being rushed through Parliament.

Other issues also arise out of the war situation. One of these is the recent attempt of the Central Government to revoke, soon after the formation of the new Ministries in 1937, the powers delegated to one of the secretaries of the Provincial Governments to issue passports on behalf of the Government of India and to set up sections of the Government of India

Department in each province. This has, it appears, drawn from more than one Provincial Ministry the protest that they regard such a change as being actuated by nothing but distrust of Provincial Ministers. The *status quo* has not so far been touched.

Another more recent move has been in the form of feelers regarding the setting up of a Central censorship during war. Here again, not all Provincial Governments were found to be pliant and the matter seems to have got hung up for the present.

Then there are the Central Government's schemes of war preparations, including air raid precautions. Originally the Government of India had proposed that provinces should bear the cost of Air Raid Precautions training. Certain Provincial Cabinets appear to have jibbed at this and drawn attention to the fact that defence expenditure being Central and non-votable, there was no justification for supplementing it by imposing additional burdens on the provincial taxpayers. Recent acquiescence by the Bombay Ministry in the Government of India's Air Raid Precautions plans, however, appears to indicate that financial adjustments to its satisfaction have been made by the Central Government as the price of its co-operation. In the background lies, of course, the entire problem of the War Resistance policy of the Congress and its implementing by Congress Ministries and it is doubtful how far participation in the Air Raid Precautions plans of the Government of India is consistent with repeated resolutions of the Congress against war preparations.

Controversy on this point as well as the recent heavy despatches of Indian troops overseas to Egypt and Singapore for imperial purposes without the consent even of the Central Legislature and despite Congress protests and popular opposition has brought this question to a head.

Meeting at Wardha early in August, 1939, the Working Committee of the Congress adopted a resolution on the war situation which contains two elements of constitutional significance.

After reiterating the Congress " determination to oppose all attempts to impose a war on India," the resolution proceeds :

> " As a first step to this end, the Committee call upon all Congress members of the Central Legislative Assembly to refrain from attending the next session of the Assembly.
>
> " The Committee further remind the Provincial Governments to assist in no way the war preparations of the British Government, and to keep in mind the policy laid down by the Congress, to which they must adhere. If the carrying out of this policy leads to the resignations or removal of the Congress Ministries, they must be prepared for this contingency.
>
> " In the event of a war crisis leading to danger to any part of India, from the air or otherwise, it may be necessary for protective measures to be taken. The Committee will be prepared to encourage such measures if they are within the control of popular Ministries in the provinces. The Committee is, however, not agreeable to such protective measures being used as a cloak for war preparations under the control of the Imperial Government."

This situation is one which is quite capable of leading suddenly to a constitutional crisis of the first magnitude in eight provinces of India. It is likely to persist till the outbreak of war, though even the Deputy Leader of the Congress Party in the Indian Legislative Assembly, Sjt. Satyamurthi, has sought to oblige the British Government by suggesting a conference with Provincial Premiers for establishing an understanding on war preparations in flagrant contravention of the Working Committee's resolution.

A storm between the Centre and the Provinces which is gathering much more slowly but with perhaps more inevitability is that which has been but faintly indicated in another resolution of the Working Committee passed on 11th August, 1939, wherein Congress Ministries have been asked to speed up the

completion of their Prohibition programmes and, " where they have demonstrable financial difficulty, to call upon the Central Government to make up the deficit."

This decision makes public what was widely whispered before, that the plan of Prohibition in three years would lead in time to a demand for a revision of the distribution of finances between the Centre and the Provinces.

The distribution of sources of revenue between the Centre and the Provinces is something about which much has been said and the last not yet heard. It is undoubtedly a weak spot in the Constitution and it may even be the rock on which the bark of Provincial Autonomy may ultimately founder.

According to the Joint Parliamentary Committee itself, the Meston Award had resulted in a situation under the old regime where the Centre was left with an undue share of those heads of revenue which respond most readily to improvements in economic conditions and where several provinces are left with sources of revenue which were never likely to be sufficient to meet any reasonable standard of expenditure. This was the state of affairs on the eve of the inauguration of the new Constitution.

The Simon Commission similarly found three chief defects with the financial system under the old Act. First, unequal treatment of provinces, some getting greater proportionate increase of revenue than others. Secondly, industrial provinces as against agricultural provinces handicapped through lack of power with them to tax industrial activities. Thirdly, provinces with their rapidly expanding needs left with sources of revenue which were inadequate and showed no signs of growth ; the Centre with stationary needs but expanding resources.

The distribution of resources between the Federal and Provincial Governments under the new Constitution has done little to redress the balance.

It is no justification to say, as the Joint Parliamentary Committee do in their report, that " no entirely satisfactory

solution of this problem has yet been found in any federal system."

The fact remains that the sources of revenue have been so divided that provincial prosperity and development have been consciously subordinated to Central security.

The appropriation of the Income-tax has been the main bone of contention in this connection. The long-standing claims of industrial provinces like Bombay and Bengal got added impetus from the refusal of the Indian States to consider the levy of income-tax in their territories by the Federal Government.

The Peel Committee appointed after the first Round Table Conference declared for an immediate transfer of Income-tax to the provinces but the Percy Committee which was appointed in December, 1931, came to opposite conclusions. The White Paper suggested that the provinces should get between half and three-quarters of the income-tax revenue, while the Joint Parliamentary Committee thought 50 per cent should be, not the minimum, but the maximum.

The topic was covered by Section 138 of the Act, but it left everything to subsequent determination. Sir Otto Niemeyer, who was deputed to make the necessary investigations, made his report on 6th April, 1936.

Broadly, the effect of his recommendations which were adopted in the Government of India (Distribution of Revenues) Order, 1936, has been to fix the percentage of income-tax to be assigned to the provinces at 50 per cent. However, the Central Government is for five years allowed to retain such further portion as is necessary to bring the share of the Centre (including railway receipts) up to Rs. 13 crores. There is to be progressive relinquishment of this sum, however, so that within ten years from the inauguration of Provincial Autonomy, the provinces enjoy their full share of revenue from income-tax.

The distribution of the proceeds between different provinces is based partly on incidence and partly on population and

works out in the following proportion : Bombay 20, Bengal 20, Madras 15, United Provinces 15, Bihar 10, Punjab 8, Central Provinces 5, Orissa 2, Sind 2 and North-West Frontier Province 1.

When the Conference of Provincial Finance Ministers met in Bombay in June, 1937, being the first inter-provincial move of its kind, the conclusions it came to were that all elastic sources of revenue had been collared by the Government of India, that the possibilities of the provinces floating loans were practically non-existent, and that there was nothing left for the Provincial Governments to do but to bring joint pressure to bear on the Government of India for a bigger and immediate share of the income-tax in advance of the time-table laid down in the Niemeyer Report. This is the very demand which the Congress Ministers may be expected to make on the Government of India in the coming months.

In the alternative, the suggestion may be made that the provincial deficits may be made good by economies effected in the Central Budget through the reduction in Military expenditure or in the salaries of the Imperial Services.

Another point of friction is the imposition of British members of the Indian Medical Service on the provinces in terms of a *communiqué* dated 25th March, 1937, of the Government of India regarding the functions and composition of the Indian Medical Service.

Other considerations apart, the racial discrimination involved in the principle that British doctors alone can attend on British officials and their families is deeply resented and it is reported that even a British Governor has referred to this assumption as ' shameful.'

Since 1938 there have been reports that the Bombay Ministry has urged the abolition of the Civil Branch of the Indian Medical Service. Other provinces, including the non-Congress Ministry of Bengal, are believed to have supported the Bombay

proposal, but it appears that nonetheless the British Government is unyielding. Rumblings are not entirely unheard of a storm over this matter.

A similar impasse appears to have come about in Bihar over the Provincial Government's scheme for Military Training, which involves the opening of a Military School and other measures which the Bihar Ministers claim are necessary for the physical regeneration of the province. The Government of India, if reports are to be believed, have objected to the proposals on the ground that Defence is a Central subject. Will this mature into another cause of crisis ?

A recent event of great interest from the point of view of the relations between the Government of India and the Provincial Governments as well as between the provinces *inter se* was the Conference of Home Ministers which met at Simla from 25th to 27th May, 1939.

It appears that the genesis of this conference lay in an attempt to hold a meeting of Inspectors-General of Police. This was frowned upon by certain Provincial Ministers and thereupon the proposal was altered to that for a conference of Ministers for Law and Order, who, in most cases, were accompanied by their Inspectors-General of Police.

A rather unusual feature of this conference was that it functioned without a chairman. Report has it that this was due to objection having been taken by a Minister from a non-Congress province to a proposal that Dr. Khan, the Frontier Premier, should be chairman of the conference !

The conference opened with a speech by Sir Reginald Maxwell, the Home Member of the Government of India.

Among the many topics discussed by the assembled custodians of Law and Order were naturally those connected with the organization of the police force. Modernizing police equipment, the suitability of tear gas for dealing with stay-in strikes

which have begun to be popular in India, the inadequacy of police reserves in the provinces and the desirability of reciprocal help by provinces during emergencies, the duties of police during air raids and for the protection of railways against sabotage, were all touched on.

It appears that a proposal from one of the Congress Ministers for the acceleration of the process of Indianization of the Indian Police Service was not taken up for discussion. Another provincial government appears to have suggested legislation making the testimony of police officers regarding confessions admissible in evidence, but this proposal does not appear to have found favour with most of those present.

The moot point about the posting of Central Criminal Intelligence officers in the provinces free from provincial control also appears to have been raised but to have led to no conclusions. Inconclusive also was a discussion on how to make police officers adjust themselves to the changed conditions under the new regime.

An interesting suggestion from one of the Congress provinces was that steps should be taken to make the police useful in connection with village welfare work and thus develop more contact with the masses. This rather revolutionary idea does not appear to have found much support, one argument among others against it being that the police force should be strictly ' neutral ' as regards any movements, whether political or social.

The only resolution of the conference which was released to the Press for publication was that arising out of the growing tendency towards inflammatory utterances leading to communal hatred and violence and the necessity of inter-provincial co-operation to control and check effectively such propaganda.

The need for consultation in regard to legislation in the Concurrent legislative field comprised in List III in Schedule 7 to the Government of India Act was also emphasized at the conference.

It may be recalled that the Joint Parliamentary Committee in their report had mentioned the desirability of the Government of India ascertaining the opinions of Provincial Governments before introducing legislation in the Concurrent field. This has been done so far and, in the case of non-official Bills, the Government have pressed for circulation so that provincial opinions may be ascertained. The Conference felt that a convention that the Provincial Governments should similarly consult the Government of India was equally desirable. It further arrived at the desirability of discussing the programme of legislation covered by List III at future conferences and of Provincial Governments giving information to the Central Government regarding the working of Acts within the Concurrent field, together with any difficulties in their administration.

The need for attempts to collate the efforts of various Provincial Governments *inter se* with a view to a certain measure of uniformity needs only to be stated to be appreciated and with the Home Members' Conference it may be said to have secured the seal of approval of the demigods in Simla. Earlier conferences there had been as, for instance, the one in 1937 of Provincial Ministers of Finance. But the Government of India had been no party to such moves.

Indeed, in October, 1937, when the Congress Labour Committee had met in Calcutta and laid down a uniform policy for Labour Ministers in Congress Cabinets, Lord Brabourne, speaking in London, thought it necessary to appeal to the Congress " not to make the task more difficult by trying to administer the whole of India as one province." How far we have moved since then can be seen from the fact that a Conference of the Labour Ministers of the Government of India and of the Provincial Governments is to meet in Delhi in November, 1939, to carry on the work which the Congress Labour Committee started in 1937.

Uniformity in legislation and in standards of administration is undoubtedly desirable from the point of view of strengthening

national unity and the consciousness of identity of purpose and direction. In so far as the influence of the Provincial Ministries, which are predominantly Congress, is brought to bear on the irresponsible Government of India and the more backward provinces, it might act as a progressive force. On the other hand, there is a danger that, as in the case of the Home Members' Conference, the distinctive approach of the Congress may get lost in the bureaucratic tone introduced by the Government of India.

CHAPTER III

The Executive

HAVING got an idea of the circumscribed field of action and legislation left to the ' autonomous ' provinces, let us now see how that field is governed.

The executive authority of the provinces, which extends to matters within the list of provincial legislation, is to be exercised on behalf of the King-Emperor by the Governor (appointed by the King-Emperor) either directly or through officers subordinate to him (Section 49).

This is probably the first incursion made by the King-Emperor into the provincial scene. This is done in pursuance of the scheme of the Constitution by which all powers are placed in the hands of the King-Emperor, who acts as a reservoir from which the Governor-General and the Governors draw their authority.

This feature of the Constitution is stressed by Professor A. Berriedale Keith in his work on *The King and the Imperial Crown* :

> " The Act of 1935 increased greatly the formal place of the Crown in the Indian Constitution by sweeping away the doctrine of 1858, which vested control in the Secretary of State for India in Council."

The Governor, as the King's representative, is thus the pivot of the entire provincial administration. Indeed, with the abolition of that impersonal personality, the Governor-in-Council, the Governor's personal rôle has gained in significance. It will be seen later when we deal with the Cabinet that his Council of Ministers does not legally form part of the executive authority of the province as his Council under the old Constitution did till 1935.

> " It is clear," says the Joint Parliamentary Committee Report, " that the successful working of responsible government in the provinces will be greatly influenced by the character and experience of the Provincial Governors. We concur with everything that has been said by the Statutory Commission on the part which Governors have played in the working of the reforms of 1919 and we do not think that the part which they will play in the future will be less important or valuable."
>
> " There is universal testimony all over India," the Simon Commission had stated, " to the skill and patience with which Governors have discharged their duty," and again : " It will be necessary to secure for the post of Governors a succession of men endowed with all the qualities of tact, judgment, sympathy and courage."

Indeed, with Ministers who may lack knowledge and experience of the administrative machine, the Governor could, if he were so disposed, be the *de facto* head of the province as well as the *de jure* head.

The first point that arrests attention concerning the place of the Governor in the new scheme of things is as to the manner of his appointment. He is appointed by the King-Emperor on the advice of the Secretary of State for India. This is in contrast to the position in the Dominions. Since the passing of the Statute of Westminster, the Governors in the Dominions are mostly nominated by the Crown on the advice not of the British Cabinet but of the Dominion Cabinet, and furthermore they are generally nationals of that Dominion. Nor is it surprising that there should be such a fundamental distinction in this connection. The Governor of a Dominion can be appointed on the recommendation of the Dominion Cabinet because he is nothing more than the King's shadow, with no more powers and obligations than a purely constitutional monarch. The Indian Governor, as we are made only too painfully aware, is on the other hand the agent of the British Government in the province, charged with the safeguarding of British authority,

British commercial rights and British officials' 'legitimate interests,' if need be against his own Ministers and the Provincial Legislature. The Provincial Governor is therefore the key arch of the steel frame, and it is not surprising that the suggestion that at least members of the Indian Civil Service should in future be ineligible for appointment as Governors was summarily rejected.

Hitherto, the Governors of the three presidencies (of Madras, Bengal and Bombay) used to be selected from the ranks of the British aristocracy, preferably from those with parliamentary experience or with a record of public service. The Governors of other provinces, however, have, ever since the first new province of Agra was formed in 1834, almost entirely been recruited from the senior ranks of the Indian Civil Service. Some members of the British Indian Delegation suggested that in future Governors should be appointed from the United Kingdom and that there should, in any event, be a bar to the appointment of members of the Indian Civil Service. This modest suggestion brought on the devoted heads of the 'Delegation' a sharp refusal.

> "We cannot accept this suggestion," said the Joint Parliamentary Committee in their report. "We hold strongly that His Majesty's selection of Governors ought not to be fettered in any way; and, that there may be no misunderstanding on the point, we desire to state our belief that, in the future no less than in the past, men in every way fitted for appointment as the Governor of a Province will be found among members of the Indian Civil Service who have distinguished themselves in India."

It is often pleaded that the experience of administration that members of the Civil Service obtain fits them for the position of Governor. As against that, may it not also be urged that their very experience is a hindrance to their performing the Governor's functions with an open and responsive mind, that the prejudices and partialities they are bound to have contracted

during their long years of service would be a handicap to them and that, above all, the fact that they belong to an economic group with its own vested interests *vis-a-vis* the people and the responsible Ministers should rule them completely out of court ?

Be that as it may, apart from the three presidencies, the provinces still have Indian Civil Service men at their head.

It is not easy to obtain first-hand testimony as to the relative merits of the Civilian as against the other type of Governor. Very few people, indeed, have experience of both types. It is possible, however, to make two assertions without fear of repudiation. The experience of the past two years has shown that there has been in other provinces, even with Congress Ministries, a slight tendency on the part of the Governors to interference with the work of the Ministers that has been happily absent in Bombay and Madras. It has also become evident that Governors drawn from the Services can among themselves be differentiated on this point and that it is not possible to generalize about Civilian Governors themselves, considering how widely they vary.

A rather interesting situation resulted in 1938 from the practice of appointing a Senior Civilian to act as Governor in between two regular incumbents. This incident happened in the province of Orissa and arose out of the proposed appointment of Mr. Daine, a member of the Indian Civil Service, as Acting Governor of the province. Mr. Daine, it may be mentioned, held the office of Commissioner in Orissa at that time.

The practice of appointing a Senior Civilian as Governor has, as is elsewhere pointed out, been in existence for well-nigh a century now. In the old dispensation there was no particular difficulty about it, because some member of the Governor's Executive Council was the recipient of the honour. With responsible Ministries in the provinces, however, the situation has undergone a profound change. As Commissioner, Mr. Daine

was subordinate to the Ministers and had acted under their orders. Was he now to be installed as Governor and to be put in a position of questioning and, if need be, countermanding the Ministers' orders ?

The Orissa Ministers took strong objection to such a procedure. It is revealing no secret to say that it was only when, backed by the Congress Working Committee, the Cabinet expressed their inability to continue in office if Mr. Daine's appointment was persisted in, that the Governor-General was able to see his way to appointing instead a Civilian from another province, an expedient which has since been resorted to in other provinces.

Turning from the Governors to the Ministers, the first thing to appreciate about the Ministers is that they are not—legally speaking—part of the Government. This may, at first blush, sound a startling proposition. It may be pointed out that Section 50 of the Act actually prescribes that there shall be a Council of Ministers. It is true that, unlike the British Cabinet, which is strictly speaking unknown to law, the Council of Ministers in an Indian province is a statutory institution.

The function of the Ministers is not, however, to carry on the King's government in the province. That rôle has been assigned by Section 49 to other hands :

> " The Executive authority of a Province shall be exercised on behalf of His Majesty by the Governor either directly or through officers subordinate to him."

It surely cannot be contended that Ministers are subordinate officers to the Governor. The function of the Ministers is " to aid and advise the Governor in the exercise of his functions " (Section 50) except to the extent that the Act calls his discretion or individual judgment into play.

Section 51(4) puts the matter beyond legal cavil when it lays down that " the question whether any, and if so what, advice was tendered by Ministers to the Governor shall not be inquired into in any Court."

Indeed, the question arose in a recent trial for sedition whether attacks on the Ministers could be considered seditious attacks on " the Government by law established." A special Bench of the Calcutta High Court had before it a Criminal Reference in which the questions asked were :

> " Under case No. 2 of 1939 (*a*) whether the Honourable Ministers of Bengal are subordinate officers to His Excellency the Governor within the meaning of Section 49, Government of India Act, 1935 ? (*b*) whether the Council of Ministers should be considered as ' Government established by law ' ?
>
> " Under case No. 3 of 1939 (*a*) whether the Ministry of a province can be said to form a part of the Executive Government of that Province in the sense implied by Section 17, Indian Penal Code " ?

Section 17, Indian Penal Code, it may be explained, provides that " the word ' Government ' denotes the person or persons authorized by law to administer the executive Government in any part of British India."

After drawing attention to Sections 49, 50, 51, 53 and 59 of the Government of India Act and paragraph 8 of the Instrument of Instructions to the Governor of Bengal, the Court proceeded to observe :

> " There is no specific provision in the Government of India Act nor in any other Statute or Act which we are aware of vesting the Ministry with executive functions. On the other hand, such functions ' shall ' in the words of Section 49 of the Act, ' be exercised by the Governor either directly or through officers subordinate to him.' The use of the word ' aid ' in Section 50 does not, in our view, vest the Ministers with any right to exercise executive authority, since such a construction does not, in our view, vest the Ministers with any right to exercise executive authority, since such a construction would be contrary to the clear provision in Section 49, nor can the rules for the

transaction of business of the Government of Bengal made under Section 59 (3) of the Act override or alter, in law, the same clear provisions. Again, the Instrument of Instructions which cannot be, and does not purport to be, in contradiction of the Act, clearly contemplates the Governor exercising the powers conferred upon him (save where in certain instances specified he acts alone) ' guided by the advice of his Ministers.' The Instrument of Instructions contemplates the Governor, and not the Ministers, exercising executive authority. The position appears to be that, unless the ministry can be held to consist of officers subordinate to the Governor within the meaning of Section 49(1) of the Act, it cannot exercise executive functions. In our view, Ministers chosen from the elected representatives of the people of the Province for the purpose of carrying into effect, if possible and within prescribed limits, their wishes, and acting as advisers to the Governor, cannot be described as ' officers subordinate ' to the Governor within the meaning of Section 49, Government of India Act, 1935. It follows therefore that although in popular language the Ministers may be referred to as ' the Government ' they are not the Government within the meaning of Sections 17 and 124 of the Indian Penal Code. Whatever may happen in practice, the Ministers are, in law, the Governor's advisers. For these reasons, we are of opinion that the answers to all the three questions put to us is ' No.' "

The dovetailing of the political and the official sections of the Government was one of the problems which was considered even before the provincial scheme of the Government of India Act was inaugurated.

Section 59 of the Act gave the Governor in his discretion power to make rules for the conduct of business of the Provincial Government including the allocation of work among Ministers.

Already in the beginning of 1937 model rules to be framed by Governors had been drafted and in February, 1937, they received the approval of the Secretary of State for India.

The draft rules provided for the distribution of work between various departments and the allotment of each department consisting of a Secretary and subordinate officials to a Minister (in place of the allotment to Ministers of portfolios as suggested by the Delhi authorities).

It appears, however, that more than one Provincial Government experienced some difficulty in giving effect to the Secretary of State's suggestion. For one thing, there was a disparity between the number of Ministers and the number of Secretaries. Thus, in Orissa there were three Ministers and four Secretaries, in Bombay four Ministers and seven Secretaries, while in Bengal the number of Ministers which, for political reasons, was as large as eleven exceeded the number of Secretaries. In the first months of Provincial Autonomy, therefore, Secretaries served partly one Minister and partly another, according to the allotment of portfolios.

It would appear that it was realized in Whitehall that however effectively the old methods had worked when the Provincial Government was itself exclusively composed of trained administrators, it would not be suitable for the very different conditions obtaining under the new Constitution. It would, it was felt, be extremely difficult for a Minister to discharge his responsibilities to the Legislature unless he could look for assistance and guidance on an allied group of subjects to a single Secretary whose relationship with him was so constant and intimate that he understood the Minister's outlook and intentions. Any Secretary who had more than one Minister to serve would be unable to fulfil that rôle. Hence the need for following the British practice as far as possible so that while one Minister may be in charge of more than one department and therefore of more than one Secretary, each Secretary should serve not more than one Minister.

The Instrument of Instructions to Governors makes it clear that what is contemplated is the Cabinet system of Government which, according to Professor Marriott, involves the acceptance of five principles : close correspondence between the legislature and the executive ; the political homogeneity of the executive ; the collective responsibility of members of the Cabinet ; the common subordination of its members to the leadership of the Prime Minister ; and the irresponsibility of the Sovereign or titular head and his exclusion from the deliberations of the Cabinet.

These are serviceable tests by which to judge the reality of the Cabinet system as it operates in the Indian provinces.

The first question that arises about the Ministers is as to the mode of their appointment and the principles on which their choice should be based. The Ministers are chosen and summoned to office by the Governor and hold office at his pleasure, being removable by him.

The only qualification prescribed for them by the Act is that they should be or within six months become members of the Provincial Legislature.

Obviously, the factor of responsibility to the legislature or its lower house considerably restricts the Governor's choice. The convention has come into existence in most countries with a parliamentary form of Government that the King or President should send for the leader of the party or group which commands the support of a majority in the popular Chamber and invite him to form the Council of Ministers, leaving it to him or the party behind him to choose his colleagues.

This question raises the rather allied question of collective responsibility of the Cabinet. There was a certain amount of discussion as to whether or not the Act should prescribe in terms joint responsibility of the Ministers. It may be mentioned that Section 54 of the Irish Free State Constitution contains such a provision. The British Indian Delegation suggested that

the Act should provide for joint responsibility. The Joint Parliamentary Committee, however, declared against statutory provision being made : " To imprison constitutional practice and usages within the four corners of a written document is to run the risk of making it barren for the future."

The Committee suggested, instead, the more flexible device that provision for due regard being given to collective responsibility should be made in the Instrument of Instructions to be issued to the Governors. In no other way, the Committee felt, could Parliament so effectively influence Indian constitutional development.

This has actually been the device adopted and the Instrument of Instructions now contains such a clause.

There is no gainsaying that the idea of securing communal representation in the Cabinet mentioned in the Instrument of Instructions goes against the principle of joint responsibility and of party government on which it is based. So long as there is communal representation in the legislature it is very unlikely that any party would be oblivious to the advantages of having members of the minority community or communities in the Cabinet. What militates against joint responsibility is that an outsider—the Governor—is given the right to interfere in what should properly be a matter for consideration among themselves by the leader and members of the dominant political party or parties.

The Simon Commission, which expressed anxiety that joint responsibility should develop, if for no other reason than that " divided responsibility means blurred responsibility," suggested two measures to foster Cabinet responsibility. One was that votes of no-confidence should only lie against the whole Cabinet and not, as had been the practice under the Montford Constitution, against individual Ministers. The other was that ministerial salaries should be non-votable and should not be varied during their term of office. This second proposal, it must be said, is hardly calculated to foster joint

responsibility, considering that it strikes at the root of any responsibility at all !

Is there a Prime Minister or a Chief Minister contemplated by the Constitution ? While there is no mention of such a personality in the Constitution, the inevitable consequence of the advice given to the Governor in the Instrument of Instructions must be to create a Prime Minister.

The Government of India Act of 1919 had by virtue of Sections 43A and 52 made it possible for the Governor to appoint Council (or Parliamentary) Secretaries. Though these provisions have been dropped from the present Constitution, there is no bar to the appointment of Parliamentary Secretaries through the passing of Bills to provide for the appointment and payment of persons who would, while remaining members of the Legislatures, aid Ministers in the performance of their duties. It is necessary in the case of such legislation to provide in accordance with Section 69(1)(*a*) of the Act that the holders of such offices should not be deemed to hold any " office of profit under the Crown in India " disqualifying them from being members of the Legislature. In fact, in several provinces, Parliamentary Secretaries have been appointed with profit.

All the information which is available goes to show that the principles of ministerial responsibility and of joint responsibility have both so far worked with great success, though as an exception that proves the rule must be mentioned the fact that the first Cabinet in Assam had by August, 1937, been defeated in the Legislature no less than eight times and still did not feel called upon to resign !

After the first elections to the Provincial Legislatures, the Governors in all provinces except one sent for the leader of the majority party and, where there was no party with a clear majority, for the leader of the biggest single party and invited him to form the Cabinet. The solitary exception was provided by the Governor of the North-West Frontier Province who went out of his way to ignore Dr. Khan, the leader of the Congress

Party, which was the biggest party but yet just short of a majority in the Assembly, and to actively participate in an effort to hold together all other groups in a coalition under Sir Abdul Quyum, a loyalist politician. This attempt resulted, among other things, in giving birth to a party called the Democratic Party, consisting of six members, whose demand—and indeed its entire programme—immediately on its formation was for a seat in the Cabinet for one of its six members ! The Frontier Governor was able to instal and for a while to keep a coalition Cabinet in office, but the unholy alliance did not last long and its break-up forced on the Governor a Congress Ministry with Dr. Khan as Premier.

The refusal of the Congress to form Cabinets without the requisite assurance in some six provinces where it had majorities in the Legislatures forced the Governors to fall back on minority groups and led to a situation which we shall discuss later.

The fact remains that, whether in the first instance or later after the ending of the constitutional impasse, the Governors followed the correct practice of calling on the majority party leaders to form their Cabinets. As far as can be ascertained, neither in the Congress provinces nor in the Punjab did the Governors attempt to object to any name or to suggest changes. The point regarding minority representation does not seem to have created any difficulties, perhaps because it was anticipated. It is noteworthy, however, that in the Central Provinces since Mr. Shariff, the Muslim Minister, resigned from the Cabinet in response to the Congress Working Committee's decision, the Central Provinces Cabinet has no Muslim member and that, despite vociferous protests from Muslim League critics, the Governor has not thought fit to intervene in the matter.

The way in which the Cabinets were constituted led to the emergence from the start of the Prime Minister. The leader of his party, the nominator of the Cabinet and the intermediary between the Council of Ministers and the Governor, the Prime Minister has in most provinces established that pre-eminence

which has come to be associated with the holder of that position in other countries with party forms of government. *Primus inter pares* probably sums up best the Prime Minister's position. The term ' Chief Minister ' was formerly in use, but statutory recognition of the term ' Prime Minister ' was given for the first time by the Ministers' Salaries Bill in the Punjab and it has since remained in general use.

There has been one obstruction to the growth of the Prime Minister's personality in the Indian provinces and that is the power given in his discretion to the Governor by Section 50(2) of the Act to preside at meetings of the Council of Ministers, despite the fact that he does not belong to it. It would have been better from the point of view of joint responsibility and real Cabinet Government if from the start a convention had been established that the Governor would not use his option to be present and that the Prime Minister would preside.

In practice, the Governors do normally preside at and participate in Cabinet meetings. An escape from this situation, with the necessity of arguing against one another in the presence of the Governor who is an ' outsider,' appears to have been found in the practice of having informal Cabinet meetings which has found favour with Ministers in most provinces. Regular meetings of the Ministers take place from day to day and notes of decisions are kept. Typed copies of these decisions are in the hands of Ministers at the formal Cabinet meetings and are adhered to by all, whatever their personal views. A joint front is thus presented to the Governor. Such a well-recognized institution have informal Cabinet meetings already become that they are sometimes referred to in official files and in one province even Secretaries to Government have been known to endorse papers : " Place before informal meeting." The position seems to approximate to that in England where the informal Cabinet meetings have become the reality and the Privy Council, which was the King's Council in the old days, has become a mere formal rubber-stamping body.

Notwithstanding this obstruction, joint responsibility of the Cabinet has, to judge from all accounts, been developing very

satisfactorily in most of the provinces. It is not surprising that the Congress provinces, with their strong, homogeneous parties and their allegiance to the leading political organization in the country, should be the model in this as in many other respects.

Very good team work has been put in by Cabinets in these provinces. While due credit must be given to the Ministers for this achievement, there is no gainsaying that the control and supervision exercised by the highest Congress executive, the Working Committee, through the Parliamentary Sub-Committee, is largely responsible for this homogeneity, not only as between Ministers in any one province, but also between different provinces.

This record for team work was badly marred, however, by the events which led up to and culminated in 1938 in what was till lately the most dramatic crisis in the Constitution.

In May, 1938, the discontent which had been growing against Dr. Khare, the Prime Minister, in the Central Provinces Assembly Party and in the Cabinet came to a head and culminated in four members of the Cabinet tendering their resignations. The resignations were not, however, placed before the Governor or the party and an understanding was arrived at that the Cabinet should remain in office, but that the Prime Minister should give up his portfolio of Law and Order.

These disputes were referred by the Congress Working Committee to the Central Provinces Assembly Party. The meeting of the party took place at Panchmarhi, and on 25th May a compromise was arrived at providing, *inter alia,* that Dr. Khare should remain as Prime Minister without portfolio. The terms of the compromise were, however, to be kept private and a joint statement was made by the Ministers reporting that they had amicably settled their differences and had agreed to work in a spirit of comradeship.

Unfortunately, the terms of the compromise were not implemented owing to Dr. Khare's resistance. On the contrary,

on 13th July, two of the Ministers friendly to the Prime Minister handed him their resignations.

On 18th July, 1938, the Prime Minister wrote to the three Ministers who were antagonistic towards him, asking them if they would follow the convention of resigning with the Premier in the event of his doing so.

The Ministers wrote back in reply protesting against Dr. Khare's proposed steps, drawing his attention to their allegiance to the Congress organization whose supreme Executive was due to meet in a couple of days and could decide the matter, and refusing to resign.

> " You cannot call upon your colleagues," two of them wrote, " to give an assurance that if you defy the Congress authority, their defiance would automatically follow. A general can make us behave like automatons in the name of discipline but a rebel should not have the audacity of expecting such behaviour from us."

On 20h July, 1938, Dr. Khare and two of his colleagues tendered their resignations to the Governor. The other three Ministers were thereupon sent for by the Governor the same day. They told the Governor they could not resign without instructions from the Congress Working Committee.

Later in the day, the three Ministers wrote to the Governor pointing out that the Congress Working Committee was due to meet on 23rd July.

> " As we told you this afternoon," they wrote, " our first duty is to the Congress and its organizations set up to guide the parliamentary activities of the Ministers in the different provinces where Congress Ministers are holding office. We took office at the instance of the Congress and hold it under its directions. Though we value the convention that the colleagues of the Prime Minister must resign when called upon by him to do so, we have to urge

that we are not free to lay aside the responsibility which we undertook expressly under the orders of the Congress. We therefore request you to defer action on the resignations in your hands. We need not say that there have been precedents in the Congress provinces of United Provinces and Bihar when ministerial resignations were not given effect to in order to avert grave issues. In view of what we have said above, we are unable to tender our resignation."

At the unusual hour of five early in the morning on 21st July, however, the three Ministers were dismissed and on the same day some members of Dr. Khare's new Cabinet were sworn in.

The new Cabinet was probably the most short-lived in the history of parliamentary government because, on the night of the 22nd, Dr. Khare sent to the Governor the following letter of resignation :—

"Since my resignation and the formation of the new Cabinet, I have had an opportunity of consulting the Congress President and the Congress Parliamentary Sub-Committee. As a result of this consultation I have come to realize that in submitting my resignation and forming a new Cabinet I acted hastily and committed an error of judgment. I therefore hereby tender my resignation on behalf of myself and my colleagues."

On 28th July, 1938, the Congress Working Committee passed a resolution on the matter in the course of which they stated :

"The Working Committee have reluctantly come to the conclusion that by a series of acts committed by Dr. Khare culminating in his resignation of his charge and demanding resignation of his colleagues of their charges, Dr. Khare was guilty of grave errors of judgment which have exposed the Congress in the Central Provinces to ridicule and brought down its prestige. He was also guilty of indiscipline in that he acted in spite of warnings against any precipitate action.

" His resignation was the direct cause of the exercise for the first time since the acceptance of office by Congress by a Governor of his special powers whereby Dr. Khare's three colleagues were dismissed.

" The Working Committee note with satisfaction that these three Congress Ministers showed their loyalty to the Congress by declining without instructions from the Parliamentary Sub-Committee to tender their resignations which were demanded by the Governor.

" Dr. Khare was further guilty of indiscipline in accepting the invitation of the Governor to form a new Ministry and, contrary to practice of which he was aware, in actually forming a new Ministry. . . .

" The Working Committee has also come to the conclusion that the Governor of the Central Provinces has shown by the ugly haste with which he turned night into day and forced the crisis that has overtaken the province that he was eager to weaken and discredit the Congress in so far as it lay in him to do so. The Working Committee hold that knowing as he must have what was going on among the members of the Cabinet and the instructions of the Parliamentary Sub-Committee, he ought not to have with unseemly haste accepted the resignation of the three Ministers and demanded the resignation of the other three, dismissed them on their refusal to resign and immediately called upon Dr. Khare to form a new Ministry and sworn in the available members of the new Ministry without waiting for the meeting of the Working Committee which was imminent."

It may be mentioned that the term ' special powers ' used in this resolution is incorrect. The right of dismissal is a normal one. What was probably meant was that it was a discretionary power.

The Central Provinces Assembly Party then met, elected a new leader in Pandit Ravishanker Shukla, one of the three dismissed

Ministers, and the new Congress Cabinet was sworn in on 29th July, 1938. The ceremony on this occasion has been described as funereal in the extreme, and well it might have been considering all that had gone before !

This episode raises certain issues of constitutional importance and interest. It has been alleged by the Working Committee, as we have already seen, that the steps taken by the Governor in dealing with the situation were not constitutionally proper. On the other hand, Dr. Khare and his adherents have argued that the Congress Working Committee arrogated too much authority to themselves and usurped the rights of the electorate to whom really Dr. Khare and his colleagues were responsible.

So far as the acts of the Governor are concerned, the position is fairly clear. He must be presumed to have known the support which Dr. Khare on the one hand and the three opposing Ministers on the other had in the Central Provinces Assembly Party. He certainly knew that the Congress Working Committee was due to meet at Wardha in a couple of days and that meanwhile the Central Provinces Ministry had been asked not to precipitate a cabinet crisis. In the light of this knowledge the prompt acceptance of the resignations of Dr. Khare and of two of his colleagues was not really incumbent on him. He could easily have withheld any action for three or four days till the position was clearer. But perhaps this much might have been overlooked as an error of judgment.His dismissal of the other three Ministers in the small hours of the morning in spite of their refusal to resign and his swearing-in immediately of some members of Dr. Khare's new Cabinet makes it impossible to avoid the conclusion that the Governor was allowing his political or his personal preferences or prejudices to actuate his conduct.

It is difficult to reconcile Sir Francis Wylie's conduct with an attitude of aloofness from party politics. Whatever his motives may have been, the Governor cannot be acquitted of the charge of having shown " ugly haste " in getting rid of the old Cabinet and smuggling into office a set of Ministers who he ought to have

known had not the backing of their own party or of a majority in the Legislature. The very fact that only a few days later Sir Francis Wylie had to invite to aid and advise him as Prime Minister and Ministers those whose 'tenure' he had 'terminated' only the other day shows that the Governor unfortunately put himself in a position which, for the sake of his own dignity and prestige, he ought to have avoided.

This episode brings to mind the resignation of the Labour Government in England in 1931 and the formation of the 'National' Government. There Mr. Ramsay MacDonald, the Labour Premier, negotiated with King George V behind the back of his colleagues in the Cabinet and of his party for the resignation of the Labour Cabinet and for the swearing-in of a coalition Cabinet dominated by Conservatives but with himself as Premier. Like the Khare episode, that incident left a nasty taste in the mouth. Constitutional experts like Professor Harold J. Laski were not lacking who said that the King had stepped off his constitutional pedestal and had joined hands with the Premier against his other Ministers. But at least King George V had the assurance and the excuse that the 'National' Government was assured of a huge majority in the House of Commons, while anyone with half an eye could have told that Dr. Khare's chances of securing a vote of confidence in the Legislative Assembly were highly problematic.

Turning to the other line of criticism, namely, that of the part played by the Congress Working Committee, the most picturesque version was that published by the *News Review* (London) :

> "Last week broom-wielder Patel raised the dust even in the far-away corridors of Whitehall's India Office .... The powerful Congress Working Committee calmly assumed the prerogatives of Central Provinces Governor, Sir Francis Wylie. Kicked out of office with no more ceremony than is required to fire an office boy was recalcitrant Dr. Khare."

Even so serious and Liberal a paper as the *Manchester Guardian*, commenting on the incident on 13th August, 1938, said :—

> "This normal incident of constitutional procedure is regarded as a shameful act of indiscipline by the members of the Working Committee . . . . No amount of anxiety can give the Working Committee any constitutional status. To put it bluntly, the Governor was perfectly within his rights and the incident was an unfortunate lapse from what politicians in India as elsewhere should accept as the correct democratic practice."

In the face of this criticism it becomes necessary to consider whether the Congress Working Committee exceeded in any way its rights as the highest executive of a political party and impinged on the rights of the electorate to whom the Prime Minister and his colleagues in the Cabinet were responsible.

The first thing that strikes one is that any posing of the Congress organization and the electorate as antithetical forces is fallacious. There is no doubt that Ministers and members of legislatures are responsible both to the political party as whose candidates they get elected and to the electorate. Indeed, their allegiance to either is not only not inconsistent with but is actually complementary to their obligations to the other.

Let us consider how Dr. Khare and his colleagues, for instance, were elected. They stood for election as nominees and representatives of the Congress. The electorate had before it the Election Manifesto and the entire record of the Congress. It voted overwhelmingly for Congress candidates, whoever and whatever they were, not because of their individual worth, but because they stood for the Congress and its policies. Besides, every Congress candidate signed a pledge by which he agreed to abide by instructions issued by the Congress and to resign his seat when called upon to do so by the Congress. This allegiance was reaffirmed when the Congress President administered the oath of allegiance to Congress legislators at the Convention in Delhi in March, 1937.

How can it then be denied that their responsibility is to their organization as well as to those who voted for them ? And how can it be gainsaid that the organization owes an obligation to the people to see that those whom it held out before them as its standard-bearers perform the tasks for which they were deputed ?

One of the many functions which the party organization has to perform is to see that harmony is maintained between the different organs—administrative and legislative—through which it functions. Thus, when the Behari-Bengali controversy developed, the Congress Working Committee took notice of it and considered the problem without waiting for the Bihar Ministry to take the initiative. Provinces which are composite in their nature, like the Central Provinces and Berar or Bombay or Madras, stand in need of greater attention and vigilance in view of the centrifugal tendencies that are likely to manifest themselves in their case. If in the case in point the Working Committee found that the Congress Premier was playing into the hands of the Governor and creating a split in the Congress Party in his province, it was nothing more than their bare duty to step in with a firm foot and preserve the integrity of the organization.

An amusing incident, though not of much significance, comes to mind in connection with the question of the resignation or dismissal of a Minister. It took place in Bengal when Mr. Naushir Ali, a member of the Bengal Cabinet, refused to resign when called upon to do so by the Prime Minister and his other colleagues. It appears that the Governor was not prepared to dismiss the refractory Minister and, in the result, Mr. Fazlul Huq had to tender the resignation of the entire Ministry and to reform a new Cabinet without Mr. Naushir Ali.

With a view to fostering collective responsibility, the Simon Commission had suggested that votes of no confidence should in future lie only against the whole Cabinet and not against any particular Minister. They had overlooked the fact, however,

that in the party caucus which controlled the Cabinet it would still be possible to express lack of confidence in a particular Minister.

Recently, a situation of this sort was created in the United Provinces when a resolution was carried in a meeting of the United Provinces Congress Party censuring an act of Mr. Sampurnanand, the Education Minister, who had appointed an English official as the Principal of the Roorki College over the head of an Indian professor.

As the resolution asked the Minister to reverse his orders, the only course open to him, if he did not desire to bow to the majority of the party, would have been to resign from the Cabinet. Such a development was averted by the Prime Minister and other Ministers invoking the principle of joint responsibility and deciding to stand or fall together. The result was that the party made it clear that no lack of confidence was meant and left the Cabinet free to take such action in the case as it thought fit, thus averting the need for resignation.

CHAPTER IV

The Legislature

We have already considered the sphere of competence of the legislatures set up in the provinces by the Government of India Act of 1935 in our discussion of the ambit of Autonomy.

It remains to consider some features regarding their composition, the method of election, the nature of the electorate and the limitations to the supremacy of the Provincial Legislatures even within the boundaries of their respective provinces and the extent of List II in the Seventh Schedule to the Act.

One of the problems regarding the Provincial Legislatures that has evoked much popular interest and been the subject of controversy has been that of whether there should be unicameral or bicameral legislatures.

The last word on Second Chambers was spoken a century ago. A Second Chamber—the wise Abbe Sieyès, French revolutionary priest and constitutionalist, had said—either agrees with the first, in which case it is a superfluity ; or it disagrees with the first, in which case it is a nuisance. Notwithstanding which, probably because certain dominant sections of society in all countries want a nuisance which they can let loose on the rest of the community, Second Chambers still persist in many lands.

The White Paper suggested that there should be Second Chambers in Bengal, Bihar and the United Provinces. It was by no means a mere coincidence that these are the three provinces where the *zemindari* system prevails. Indeed, the very existence of permanently entrenched big landed interests was made the reason for creating an extra fortification against any popular assault on them.

When the Joint Parliamentary Committee came to consider this question, they thought it would be a good idea if Bombay and Madras too had Second Chambers, presumably on the

ground that the capitalist interests there were as deserving of protection as the landed interests in the three *zemindari* provinces !

The House of Commons went one better and added Assam to the list, in grateful if belated recognition of the loyalty of the British tea planters. This is rightly described by Professor Keith as " a further concession to the conservative character of the whole scheme."

This feature is a definitely retrograde step from the Act of 1919. The proposal for Second Chambers in the provinces had been carefully examined by Mr. E. S. Montagu and Lord Chelmsford and rejected by them as both unnecessary and inexpedient.

Even the Simon Commission, reactionary as was its composition, found itself in two minds about it. In fact, the Commission proposed instead a small revising body of experts who should examine in great detail every Bill between the second and third readings and suggest modifications if they felt any to be necessary.

The arguments for and against the setting up of two chambers in Indian provinces were summed up by the Indian Franchise Committee, which had Lord Lothian as its chairman. In favour of Second Chambers were urged such considerations as the need for a body gifted with expert knowledge and experience which would act as a stabilizing factor and a security against hasty legislation and abuse of power ; the securing of the services of those who would not choose to stand for election ; and the provision of a more effective brake in normal times than the Governor.

Against Second Chambers were mentioned the weight of public opinion in India ; the danger that measures beneficial to the masses might be impeded and discontent aggravated ; the opportunities provided for delay and obstruction ; and the unnecessary expense involved.

The clamouring of vested interests who feared the impact of the very first dose of democracy on their crusty privileges,

however, proved too strong. The very " menace to the Cabinet principle involved in the existence of two chambers " (Marriott) was in such eyes a merit.

The Provincial Legislatures are thus constituted in Madras, Bombay, Bengal, the United Provinces, Bihar and Assam of the King-Emperor represented by the Governor, the Legislative Council and the Legislative Assembly and in other provinces of the King-Emperor represented by the Governor and the Legislative Assembly.

The qualifications for being on the electoral rolls for the legislature are not prescribed by the Act, powers being delegated for provision in this regard being made by Orders-in-Council.

These have followed generally the findings of the Franchise Committee with Lord Lothian as its head. That Committee had the task set before it of making recommendations which would give the vote to not less than ten per cent of the total population, as had been recommended by the Simon Commission, and not more than twenty-five per cent as desired by the Round Table Conference.

In the result some 35 million voters have been enfranchised, being about 14 per cent of the total population, as against 8,744,000 voters under the previous constitution.

The qualifications required of voters are of several kinds. There is in every case, of course, the necessity of six months' residence in the constituency. Payment of income-tax, holding land assessable at a minimum amount of land revenue, occupying as tenant a tenement with a minimum rent, having passed the matriculation examination and being a retired officer or soldier in the army, are further qualifications of which a voter must satisfy at least one.

A woman is, in addition, eligible for the vote if her husband is qualified to be a voter. Literacy is also an additional qualification for members of the Scheduled (Depressed) Castes.

In the case of matriculates and of women, enrolment on the electoral register is to be by application.

The result of the extension of the franchise under the 1935 Constitution has been to enfranchise the middle classes in the towns, a small section of the industrial workers and a fair section of the landed peasantry.

The Nehru Report, which had emerged from the All-Parties Conference, had contemplated adult suffrage. The Simon Commission ruled it out of serious consideration on the ground that it would mean placing over 100 millions on the register all at once. Considering that, as it is, 35 millions have actually been put on the rolls, there does not seem to be any valid reason for ruling out a really democratic electorate.

While both chambers are in the main popularly elected and there is no *bloc* of official or nominated members as under the Montford Constitution, some seats are to be filled by nominees of such sectional interests as Commerce, Industry, Landlords and Industrial Labour. Even the general territorial constituencies are divided into communal compartments for Hindus ('General'), Mahomedans, Sikhs, Europeans, Anglo-Indians and Indian Christians. There are further reserved seats for Women in each of these communal divisions and for the Scheduled (Depressed) Classes in the General (i.e., Hindu) electorates.

This is the result of the Communal Award given by the British Prime Minister, ex-socialist Ramsay MacDonald, as head of the Conservative Government in 1931, as modified by the Poona Pact of 1933 which removed at least one vicious feature, namely, separate electorates for the Depressed Classes, and merged them in the General Hindu electorate with reserved seats.

The Communal 'Award' is, of course, a misnomer. An award presupposes arbitration and arbitration is a process voluntarily resorted to by free and equal parties. It may be claimed that in this case the contending parties were the Hindus, Muslims, Sikhs and other communities and that since at the Round Table Conferences they could not arrive at an arrangement it became necessary for the British Government

to give a decision. But that is a very different thing from an Award. For there was no voluntary submission of the dispute to the Premier. Even if the ' delegates ' to the Round Table Conference had signed such a reference, considering that they were themselves the nominees of the arbitrator (the British Government), their competence to bind their respective communities would have been plainly open to question. As a matter of fact, there was not even such a submission to arbitration.

The hand-picked ' delegates ' chosen by the British Government to represent the Indian people having conveniently failed to play ball with one another, the British Government nobly took the responsibility on their own shoulders and gave an Award which has divided India into water-tight compartments on the basis of religion and thus encouraged the worst exhibition of fanaticism and chauvinism. How shallow is the plea that the people of India *want* such separate electorates will be realized when it is noted that even the seats reserved for women are to be filled up by communal electorates in spite of the active opposition of all women's organizations to such an imposition and the *complete* absence of any demand for it. What but the malignant desire to foster communal feeling and even extend the virus to women can explain such a decision ?

" The spirit of toleration," the Simon Commission had sanctimoniously written in order to justify the imposition of communal electorates, " which is only slowly making its way in Western Europe, has made little progress in India."

Apart from the irony of the past years which have made of this smug remark an amusing anachronism, the statutory segregation of voters by religious sects by no means follows from religious intolerance or dissension.

There exists a perfect expedient by which the due representation of minorities—whether religious or otherwise—can be secured through joint electorates. That method is Proportional Representation.

Multi-member constituencies with a single transferable vote or even the cumulative vote would be a fool-proof method of

ensuring Muslim, Christian or other minority representation to the extent, but *only* to the extent the voters of those minorities genuinely desire it. That is precisely what does not suit those who thrive on religious separatism. Introduce joint electorates and, sooner rather than later, good sense will assert itself and men of goodwill will have their day, thus ending the communal problem, which is such an obstacle to Indian Independence and, therefore, such a bulwark of British rule.

It is not surprising, therefore, that the Simon Commission brushed aside the suggestion of the Joint Select Committee on the Bill of 1919 that Proportional Representation " may be found to be particularly applicable to the circumstances of India " and the scheme of ' Primaries ' which they had prepared to meet the objection that the members of the minority communities elected by proportional representation would be such as were not acceptable to their own communities. Joint electorates with proportional representation were ruled out of consideration by the Simon Commission on the ground that multi-member constituencies with the single transferable or cumulative vote would be impracticably large. Better that India were carved up into religious groups and became the victim of warring sects than that the inconvenience of rather large constituencies should be faced and removed !

The Communal Award of Mr. Ramsay MacDonald has been the object of tremendous and prolonged public controversy in India. That the Award was in many respects unfair and cast more than one fresh apple of discord among those who were already wrangling over the representation of different religious communities cannot be denied. It is not, as Mr. H. N. Brailsford, with sound instinct but inadequate knowledge of detail, put it, that " every minority was over-represented on a systematic plan." Undoubtedly, wherever the Muslims are in a minority, they have been over-represented. So too Europeans, Anglo-Indians and Indian Christians. But this is no longer so where Hindus are concerned. Thus, in Bengal and Punjab,

where the Hindus are in a minority, they are actually under-represented. In the Punjab, with 28.3 per cent. of the population, the Hindus are allotted 24.6 per cent. of the seats in the Legislature ; in Bengal, with 44.8 per cent. of the population, they have only 32 per cent. of the seats. It would be difficult to refute the charge, therefore, that minorities are tenderly treated only when they can be expected generally to be ' loyal ' to the British regime.

A recent meeting in Simla of the Speakers and Presidents of Indian Legislatures brings to mind an interesting point of controversy connected with legislatures which still remains and will remain without a final answer for a long time to come.

On his election as Speaker of the United Provinces Legislative Assembly, Babu Purshotamdas Tandon caused quite a flutter in the haunts of tradition by boldly declaring that while he would be strictly impartial in his acts as Speaker, he would—contrary to British practice—continue to be an active Congressman and would consider himself free when not in the Chair to speak his mind and act up to his political principles.

This, from the British constitutional point of view, is rank heresy, for the Speaker of the British House of Commons considers himself to-day to be above party. It is often forgotten, though, how recent is this convention and how actively partisan Speakers of the House of Commons have been till quite recent times.

Even to-day, the Presidents of the French Chamber of Deputies and of the House of Representatives in the United States of America occupy a far from neutral position in the political life of their countries or even their Chambers. It may fairly be argued, therefore, that in a country like India where the main political struggle is still one against a foreign Government, there is no reason why the services of some of her most intrepid soldiers like Tandonji should be lost to the cause.

It is noteworthy that despite Babu Purshotamdas Tandon's political activity, there has been no occasion yet for anyone to

question his complete impartiality when conducting the proceedings of the Legislative Assembly as Speaker.

It now remains to consider the process by which legislation can be enacted in the provinces and the place in the scheme of things which the Chambers of the Legislature on the one hand and the Governor on the other occupy so far as legislative functions are concerned.

The Provincial Legislatures are obviously not sovereign law-making bodies. Even the proposed Federal Legislature is far from being sovereign in even the sense that the legislatures of Canada, South Africa or the Irish Free State can be termed sovereign legislatures since the enactment of the Statute of Westminster. Much more obviously limited in extent of jurisdiction are Provincial Legislatures, confined as they are to matters within List II of the Legislative Lists.

The question still remains : Is a Provincial Legislature supreme even within the boundaries of the province (excluding Excluded Areas) and the confines of List II ? The answer must be a categorical ' No.'

There is first the Governor's veto (Section 75). It may, of course, be contended that the Governor as representing the King-Emperor is part of the Legislature and that his veto means no detraction from the supremacy of the Legislature.

It is true that constitutional heads of States, such as the King in England or the President of the Republic in France, have the right to veto. The important point that is overlooked is that the power is to be exercised by the Governor *in his discretion* and not, as is the case in any genuine parliamentary system, by the King or President on the advice of the Ministers who in turn are responsible to the Legislature. In the latter case, the veto only comes into operation—and that very rarely—when the Cabinet desire to appeal to the electorate against the decision of the Legislature. Under ' Provincial Autonomy,' the veto can be used to flout both Legislature and the Cabinet, either owing to the personal whim or caprice of the Governor or on the instructions of the Governor-General

on behalf of the British Government. For it must be borne in mind that when he acts in his discretion the Governor does so under the supervision and control of the Governor-General, who in turn functions under directions from the Secretary of State in England.

In addition to the Governor's own right to withhold assent to a Bill, he has the right to return a Bill to the Chamber or Chambers of the Legislature with a message requesting reconsideration of the Bill or of any specified provision in it and of any amendment he may recommend (Section 75). The Chamber or Chambers are bound to reconsider the measure but not to follow the Governor's advice. In that case, however, the Governor would be free to fall back on his right of veto.

There is another power in the Governor's hands in this connection and that is to reserve a Bill for the consideration of the Governor-General (Section 75), who may either assent to it on behalf of the King-Emperor or return it to the Legislature for reconsideration or refuse assent or in turn reserve it for His Majesty's consideration. In the latter case, if His Majesty's assent is not signified within twelve months, the Bill lapses.

Already, under this provision certain measures passed by Provincial Legislatures have been reserved for the consideration of the Governor-General. Two such cases come to mind.

The first, which has been hanging fire for a considerable time already, is that of the Madras Land Estates Amendment Bill, a measure of agrarian reform affecting the *zemindari* tracts in Orissa which have been transferred to that province from Madras Presidency. Impelled to do so, no doubt, by the protests of the *zemindars* the Governor of Orissa reserved the Bill for the Governor-General's consideration on the ground, presumably, that it was ' expropriatory ' in its nature. After some time, it was referred back by the Governor-General to the Provincial Government for reconsideration in consultation with the *zemindars* who were adversely affected.

Meanwhile, much more drastic legislation was foreshadowed in Madras for land with similar tenures in the report of the

Prakasam Committee. All the same, a conference was held as desired by the Governor-General to consider the *zemindars'* suggestions for modifications, but the Ministry came to the conclusion that no alterations were called for. The next move is with the Governor-General and is already overdue. It is open to the Governor-General either to signify his assent or to withhold it, or to reserve the Bill for the signification of the King-Emperor's pleasure. It is hardly likely, however, that the Orissa Ministry will be willing to accept a vetoing of the Bill or even the further delay involved in a reference to the King.

Another Bill exercising the Governor-General's mind is the Employments Tax Bill reserved for his consideration by the Governor of the United Provinces. Sir Tej Bahadur Sapru has expressed doubt about the legality of the measure and one of the issues involved is whether it impinges on the special responsibility for the protection of the rights of the Services.

It would be open to the Governor-General, if he does not see his way to giving his assent, to refer the Bill to the Federal Court for its opinion, for it is highly unlikely that the Governor-General would venture to refuse assent to such a measure, unless he were fortified by an opinion of the Federal Court that the measure was *ultra vires* of the Provincial Legislature.

The most serious and unprecedented interference with the autonomy of Provincial Legislatures is provided, however, by Section 77 of the Act, which gives the King-Emperor the power to disallow within twelve months even an Act of the Provincial Legislature which has been duly assented to by the Governor or the Governor-General. This power of disallowance is foreign to the spirit of the British Constitution, was unknown to the laws of the Dominions even before the Statute of Westminster and is an intriguing innovation made by the Act. It breathes of distrust even of the Governor-General and the Governors whose veto it is meant to supplement. Probably because it is so very difficult to justify or even explain, the

report of the Joint Parliamentary Committee makes no reference to it whatsoever !

The power of veto, whether vested in the Governors, the Governor-General, or the King-Emperor, is a corrective power. On the principle that prevention is better than cure, the Constitution also gives the British satraps power to *prevent* the consideration of measures affecting certain matters. Thus, unless the Governor-General in his discretion gives his previous sanction, no Bill can be introduced in a Provincial Legislature which repeals, amends or is repugnant to an Act of Parliament, which similarly affects any Governor-General's Act or Ordinance, which affects matters which are entrusted by the Act to the Governor-General's discretion or which touches the procedure for criminal proceedings in which Britishers are concerned. Similar previous sanction of the Governor in his discretion is required, *inter alia*, for measures repealing, amending or repugnant to a Governor's Act or Ordinance or similarly affecting any Act relating to the police force (Section 108).

These provisions, along with the declaration in Section 110 that nothing in this Act should be deemed to affect the power of Parliament to legislate for British India or any part of it nor to authorize the Federal or any Provincial Legislature to make laws regarding the Sovereign, the succession to the Crown or its sovereignty in India (inspired perhaps by fear of the example of the Irish Free State and Canada acting under the Statute of Westminster being followed) or affecting the Government of India Act or any Orders-in-Council or rules thereunder or derogating from the prerogative of the Crown to grant leave of appeal to the Privy Council, make it crystal clear that the Federal and *a fortiori* the Provincial Legislatures are merely subordinate law-making bodies.

We have already seen how, despite certain demands from interested quarters, the sphere of Finance was not excluded from the purview of responsibility. The restrictions on the freedom of the Provincial Legislature in connection with financial matters show, however, how limited that responsibility is.

Certain important heads of expenditure are listed by the Act (Section 78) as " expenditure charged on the revenues of a province." Among these are the emoluments of the Governor, of the Ministers, of the Advocate-General, of the Judges of the High Court and of members of the Imperial Service serving in the provinces, debt charges, administration of excluded areas and decrees of courts or tribunals. The Act then proceeds to lay down that so much of the expenditure of a province as is charged on its revenues should not be submitted to a vote of the Legislature and that, while other expenditure of this nature may be discussed, the emoluments of the Governor should not be open even to discussion (Section 79).

To start with, therefore, a substantial portion of the provincial revenues is to be expended on purposes over which the Provincial Legislature has no control. Is even the rest of the expenditure completely within the grasp of the people's representatives ? Alas, no !

The demands for grants are, of course, to be made on the recommendations of the Governor, i.e., by the Ministers (Section 79), and so too Bills for levying taxation or for raising loans (Section 82). This is in accordance with parliamentary practice in England and elsewhere. The Legislature is competent to reject or reduce the sum demanded. So far, so good. But if a refusal or reduction is made by the Legislature that in the opinion of the Governor " affects the due discharge of any of his special responsibilities," he may restore so much of the grant as appears to him to be necessary in order to enable him to discharge that responsibility (Section 80).

It will be seen that this power of restoring grants for expenditure extends, like the Governor's special responsibilities, to the entire field of administration and the Governor himself is the sole judge of whether or not the due discharge of his special responsibilities is affected by the action of the Legislature.

In a slightly analogous position is the expenditure on the education of Anglo-Indian and European children. Unless

three-fourths of the Legislative Assembly so desires, the proportion of the educational expenditure that was allotted to them on an average for the ten years preceding 1933 shall be secured for the purpose (Section 83).

We arrive now at a very vital restriction on the powers of the Legislature which may be described as its incompetence to legislate in a manner discriminating against Britishers and British business concerns.

In response to pressure from British commercial interests in India, the Simon Commission had entered into a consideration of measures by which the popular Governments and Legislatures of the future could be prevented from exercising their powers in such a way as to discriminate against Britishers and British trade and capital in India. With all their desire to buttress British vested interests in India against popular inroads, the Commission came to the conclusion that " statutory provision would have to be so widely drawn as to be little more than a statement of abstract principle affording no precise guidance to courts which would be asked to decide whether the action complained of was discriminatory. . . . These objections are decisive against the proposal to prevent discriminating legislation by attempting to define it in a constitutional document."

The Joint Select Committee was not content, however, with leaving matters there. It recommended an additional ' special responsibility ' of the Governor-General and Governors for this purpose as well as statutory provision against discriminatory legislation. In so doing, the Joint Select Committee brushed aside the plea of the British Indian Delegation contained in its joint Memorandum submitted to the Committee :

> " The All-Parties Conference which met in India in 1928 and which was presided over by that eminent leader of the Congress, the late Pandit Motilal Nehru, stated in their report (commonly known as the Nehru Report) that ' it is inconceivable that there can be any discriminatory legislation against any community doing business lawfully

in India.' The statement was endorsed in even more emphatic terms by Mr. Gandhi at the second Round Table Conference. It has been accepted on the one hand that there shall be no unfair discrimination against British companies operating in India, while it is equally agreed on the other side that the Indian Government should have all the powers which Great Britain and the Dominions possess to develop indigenous industries by all legitimate methods. The difficulty throughout has been to define by legislation the expression 'legitimate' and 'unfair' and also the term 'indigenous.'" (Records of Joint Select Committee unrevised (10) Session, 1932-33, H.L. 79 (iii) page 45.)

It is difficult in a few words to give any idea of the wide ambit of the discriminatory clauses—discriminatory, because while professing to guard against discrimination, they themselves constitute a most oppressive discrimination in favour of Britishers and British business in India.

Writing about the safeguards against discrimination, Professor Keith describes them as "complex, yet obviously imperfect . . . . certainly liable to be regarded as oppressive and unfair restrictions." He touches the height of unconscious irony, however, when he concludes : "The series of prohibitions take the place of the declaration of fundamental rights for which many Indians asked and which was discussed at the Round Table Conference."

The freedom of the Legislatures is, to start with, crippled by the demand that any Bill or amendment which seeks to affect the procedure for criminal proceedings against European British subjects or to subject Europeans not resident in British India or companies not wholly controlled and managed in British India to greater taxation than persons resident in India or companies wholly controlled and managed therein, or to affect the grant of relief from any Federal taxation on income taxed or taxable in the United Kingdom, must have secured the previous sanction of the Governor-General in his discretion.

Then come Sections 111 to 120 which compendiously seek to bolt every door and bar every access to the privileged position occupied by Britishers in every walk of life in this country.

Thus, a British subject domiciled in the United Kingdom is exempt from the effect of any federal or provincial law which seeks to restrict his entry into India or which imposes any disability on him regarding travel, residence, property, public office, trade, business or profession (Section 111).

Discriminatory taxation is made impossible by the provision invalidating laws, federal or provincial, which impose any liability to taxation so as to discriminate against British subjects domiciled in the United Kingdom or companies incorporated by or under the laws of the United Kingdom (Section 112).

To meet and anticipate requirements imposed by law regarding the place of incorporation of a company, or the place of birth, race, domicile or residence of its members, directors or officers, it is provided that a company incorporated by or under the laws of the United Kingdom and its members, directors, and officers shall, *ipso facto,* be deemed to comply with any such requirements (Section 113).

This fiction is also extended to Britishers who are members, directors or officers of companies incorporated in India where similar requirements are imposed, whether for the purposes of preferential treatment or exemption from taxation (Section 114). British ships and aircraft are not forgotten either (Section 115).

As regards subsidies and bounties for the encouragement of Indian industry or trade, companies incorporated in the United Kingdom are entitled to receive any such grant *to the same extent* as companies incorporated in British India. As regards British firms already engaged in such business in British India, this exaction is absolute. The framers of the Act, however, graciously condescend to authorize the Legislatures to stipulate for incorporation in India for a proportion not exceeding one

half of its directors being domiciled in India and for facilities for training Indians in the case of British concerns which were not engaged in British India in the trade or industry concerned at the date of the passing of such Act (Section 116). Restrictions are also placed on legislation regarding professional and technical qualifications in general and medical qualifications in particular which might militate against Britishers (Sections 119-121).

The justification for all these provisions is sought to be provided by the saving clause that if any discrimination is in force in the United Kingdom against Indians, Indian concerns or Indian shipping, then *pro tanto* these provisions do not apply.

This is sought to be described as an application of the principle of ' reciprocity ' and indeed Section 118 of the Act actually lays down that if a convention is made between the British Government and the Federal Government providing for similarity of treatment to each other's nationals and companies on a basis of reciprocity, the King-Emperor is empowered by Order-in-Council to declare that, since the purpose of these provisions is fulfilled by such a convention, these sections are suspended for the duration of such convention.

Actually, the reciprocity which is guaranteed by the Act is about as reciprocal as the Free Trade between Britain and India throughout the nineteenth century was free.

The number of Indians residing in the United Kingdom and the number of Indian companies doing business there is so negligible compared to the huge British vested interests in India, whether in the Services or in the capital invested in trade or shipping with India and in industries and plantations in India, that reciprocity in such conditions is at best a painful joke.

It reminds one of the suggestion made by a wag when Italian aggression started against Abyssinia that the Suez Canal Company should impartially declare the Suez closed to

the ships of both Italy and Abyssinia ! Such, in fact, is the reciprocity of the Government of India Act.

The foregoing provisions of Chapter III of Part V of the Act are further buttressed by the creation, at the suggestion of the Joint Parliamentary Committee, of additional special responsibilities of the Governor-General and Governors. Among those of the Governor-General are enumerated the prevention of actions which would subject goods of United Kingdom origin imported into India to discriminatory or penal treatment, while both the Governor-General and Governors are charged with " the securing in the sphere of executive action of the purposes which the provisions of Chapter III of Part V of this Act are designed to secure in relation to legislation " (Sections 12 and 52).

Another way in which the independence of the Legislature is limited is by giving the Governor in his discretion power to make rules for regulating the procedure of the Chambers regarding matters affecting the functions he has to discharge in his discretion or in the exercise of his individual judgment ; for the timely transaction of financial business ; for prohibiting discussion without his consent regarding any Indian State or its ruler, or relations with foreign powers, or excluded areas (Section 84).

At the very first session of the new Provincial Legislature, the Governor of Bihar thought it fit to bar discussion of a resolution for the hoisting of the National Flag on public buildings. It is difficult to see where the Governor claimed to derive the power to do so. It certainly could not be from Section 84.

On the other hand, when the Bengal Assembly discussed and passed a resolution that 60 per cent of the appointments in the Provincial Service should be reserved for Muslims, who constitute 55 per cent of the population, the Governor did not think it fit to interfere. There was an outcry at this and it was asserted that the resolution was ' illegal ' on the ground that

it contravened Section 298(1) and (3) and Section 52(1)(*b*) of the Government of India Act. Critics of the Governor also cited paragraph 9 of the Instrument of Instructions to the Governor :

> " Further, our Governor shall interpret the said special responsibility as requiring him to secure a due proportion of appointments in our services to the several communities and, so far as there may be in his Province at the date of issue of these our instructions an accepted policy in this regard, he shall be guided thereby, unless he is further satisfied that modification of that policy is essential in the interests of the communities affected or of the welfare of the people."

While one can sympathise with the resentment felt against such a resolution, it was one which technically was quite within the competence of the Legislative Assembly to pass. The considerations urged above do, however, indicate the possibility of intervention by the Governor at a stage when the Bengal Ministry seek to put such a policy into actual effect.

The Chamber or Chambers of the Legislature have the right to make rules generally for the conduct of their business. What happens when the rules made by the Governor are inconsistent with those of the Chamber ? The Act does not leave the matter in doubt. In case of a conflict, the rules made by the Governor shall prevail (Section 84).

The Governor has yet another right to bar discussion in the Legislature. If he in his discretion certifies that the discussion of a Bill or a clause of or an amendment to it would affect the discharge of his special responsibility for the prevention of any grave menace to the peace or tranquillity of the province or any part thereof and directs that the Bill, clause or amendment should not be proceeded with, his directions must be carried out (Section 86).

The final blow to the supremacy of Provincial Legislatures comes from the legislative powers of the Governor.

Not only is the Governor, as the King-Emperor's representative, part of the law-making machinery along with the Chamber or Chambers, he is by himself an alternative legislature all complete.

The least objectionable or obnoxious legislative power of the Governor is that of promulgating an ordinance when the Legislature is not in session (Section 88). He may do so when he is satisfied that "circumstances exist which render it necessary for him to take immediate action." It should be borne in mind that this power, except in certain cases, inheres in the Governor acting on the advice of his Ministers. In view of this and the fact that such an ordinance ceases to operate six weeks from the reassembly of the Legislature or even earlier on a resolution disapproving it being passed by the Legislature, this particular kind of ordinance does not encroach much on the domain of the Legislature.

There have already been some occasions for the use of the Governor's power to promulgate ordinances under Section 88 of the Act. Two very recent instances are the Madras Temple Entry Indemnity Ordinance and the Bombay Fodder and Grain Control Ordinance.

The Madras Ordinance was promulgated on 17th July, 1939. Legislation for the entry into temples of *harijans* who were excluded from such entry and worship had already been enacted in Madras. It had become necessary, however, to fortify such legislation by devising means by which those who acted in furtherance of such reforms should be indemnified and protected. As the Madras Legislature was not in session and immediate action was found to be necessary, recourse was had to this ordinance-making power.

The Bombay Ordinance, which was promulgated on 12th August, 1939, was a result of the shortage of rain and the famine conditions in the presidency. The immediate necessity of controlling and regulating the supply and distribution of fodder and grain through the regulation of prices and otherwise

and the fact that the Legislature was not then in session were cited as its justification.

In both cases it was stated that the instructions of the Governor-General under proviso (*b*) of Section 88 of the Act had been secured and that legislation on the same lines would be introduced as soon as the Legislatures met.

There is another variety of ordinance, however, which is positively obnoxious—that which may be promulgated by the Governor in his discretion *even when the Legislature is in session* (Section 89). In order to exercise this power, the Governor should be " satisfied that circumstances exist which render it necessary for him to take immediate action for the purpose of enabling him satisfactorily to discharge his functions in so far as he is by or under this Act required in the exercise thereof to act in his discretion, or to exercise his individual judgment."

An ordinance so promulgated is to continue in operation for six months and may be renewed for a further period of six months.

Last but not least is the Governor's Act, which differs from an ordinance in its permanence. This again is a discretionary power of the Governor and may be exercised by him " for the purpose of enabling him satisfactorily to discharge his functions in so far as he is by or under this Act required in the exercise thereof to act in his discretion or to exercise his individual judgment " (Section 90). There is one preliminary, however, that has to be gone through before such an Act can be enacted and that is for the Governor to send a message to the Chamber or Chambers explaining the reasons which make such legislation necessary and either the Act, or a draft Bill which he may enact as an Act after a month, allowing the Chamber or Chambers an opportunity to present an address to him with reference to such Bill.

The limitations hitherto mentioned to the supremacy of Provincial Legislatures have all been such as to leave, while

trespassing on their domains, some residue of power to them. The Act contains one provision, however, which enables a Provincial Legislature to be wiped out of existence by the fiat of the Governor in his discretion with the concurrence of the Governor-General in his discretion.

This drastic step can be taken by a Governor if he is satisfied " that a situation has arisen in which the government of the Province cannot be carried on in accordance with the provisions of this Act " (Section 93). He may then issue a Proclamation declaring as exercisable in his discretion such of his functions as he may specify and assuming to himself all or any of the powers vested in any provincial body or authority, except a High Court.

To start with, such a Proclamation would remain in force for six months but it can be kept alive for twelve months at a time by resolutions approving of its continuance by both Houses of Parliament, totalling in all three years.

CHAPTER V

Limits of Responsible Government

THE way in which the administration of the provinces is to be conducted is laid down in Section 50 of the Act. Starting with the general proposition that there should be a Council of Ministers to aid and advise the Governor, the section proceeds to lay down three limitations—first, that the Council of Ministers have no *locus standi* concerning those functions of the Governor which he is to exercise in his discretion ; secondly, that the Governor is free to exercise his individual judgment wherever he is required by the Act to do so ; and thirdly, that the Governor will be the final judge as to whether any matter is or is not a matter as regards which he is required to act in his discretion or to exercise his individual judgment.

There are, therefore, three ways in which a Governor can function :—

(1) on the advice of his Ministers ;

(2) in the exercise of his individual judgment after consulting his Ministers ; and

(3) in his discretion, without consulting his Ministers.

Since the Constitution specifies the occasions on which the Governor's discretion or individual judgment should have its way, the advice of the Ministers is effective only in the residue of cases and it is only by surveying, however cursorily, the boundary lines that we can have an idea of the field of responsible government in the provinces.

The question of reserve powers or ' safeguards,' as they are popularly described, is one which has been the centre of controversy ever since the Simon Commission submitted its report.

They already figured very prominently in the White Paper of 1933 which recorded the results of the so-called Round Table Conferences.

The Joint Parliamentary Committee were not, however, satisfied. They felt that the Governor's power to act on his own authority—which they referred to as an 'inherent power'—was not set forth with sufficient clearness in the White Paper and that it should be more explicitly defined; and defined it was.

According to the Joint Parliamentary Committee, the reserve powers are intended to fulfil the functions of supplying the need for flexibility, for a strong executive, for efficient administration and for holding the scales even between conflicting interests. Let us see them as they have emerged from the legislative anvil.

Broadly speaking, the Governor's powers are the same for the province as the Governor-General enjoys for the whole country, with this distinction that, while he has no Reserved Departments under his personal control and no special responsibility for finance, he has the Excluded Areas to administer in his discretion and the Partially Excluded Areas according to his individual judgment and the extra obligation to execute the Governor-General's orders.

The power of the Governor to act in his discretion free from ministerial advice comes into play on numerous occasions.

First, there is territory covered by the creation of Excluded Areas in the provinces (Section 92) in respect of which the Governor is to exercise his functions in his discretion and also to decide whether any Act of the Federal or Provincial Legislature is or is not to apply. Administration of partially excluded areas is made a special responsibility of the Governor.

This is a territorial limitation on responsible government in the provinces which was sought to be justified on the grounds that the inhabitants of tribal areas were not equipped to take their place in a democratic system of government and that their interests were liable to be neglected at the hands of a popular Ministry.

An interesting comment on this forms part of a report recently made by Mr. D. Symington, a member of the Indian Civil Service, who was deputed as a Special Officer to conduct an inquiry into conditions among the aboriginal and hill tribes in the partially excluded areas in the Bombay Presidency. Writing about the belief on which the reasons for the exclusion from the sphere of responsible government of such areas mentioned in the previous paragraph were based, Mr. Symington observes :

> " There will not be many dissentients from the first part of this belief. Whether the second part is justified or not is a matter which only the future can show ; at present I need hardly say the indications are to the contrary."

Certainly the keen interest taken by the popular governments in the welfare and emancipation of the backward tribes has belied the fears professed by the imperialist framers of the Constitution and shown their solicitude to have been misplaced.

Among other important functions which are discretionary are the selection and dismissal of Ministers (Section 51(5)), the summoning, proroguing and dissolving of Chambers of the Legislature (Section 62), addressing and sending messages to the Legislature (Section 63), summoning joint sittings of the two Chambers (Section 74(2)), stopping proceedings in the Legislature which affect the discharge of the special responsibility for preventing any menace to peace and tranquillity (Section 86), assenting to Bills or returning them to the Legislature for reconsideration (Section 75), framing rules of procedure for the Legislature (Section 84) and deciding whether or not certain expenditure is charged on the revenues of the province (Section 78(4)).

If the Governor is satisfied that the peace or tranquillity of the province is endangered by operations of persons committing or conspiring to commit crimes of violence intended to overthrow Government, he is empowered to direct that such

functions of his as he may specify shall be exercised by him in his discretion (Section 57) and he can also make rules for securing that no records or information regarding the sources from which information may be obtained regarding such crimes shall be disclosed or given to any person (including his own Ministers) save at his direction (Section 58). It will be noticed here that the Governor is the sole judge of the danger to peace and tranquillity, of the nature and limits of the functions which should be removed from ministerial control and of the way in which they should be exercised !

There is in the Act only one discretionary power which the Governor may exercise after consulting his Ministers. That is the power to make rules to regulate the conduct of business of the Provincial Governments and its allocation among Ministers (Section 59).

Then there are the law-making powers of the Governor in his discretion, extending to the promulgation of Ordinances (Section 89) and enacting Governor's Acts (Section 90).

Last but not least is the drastic power under Section 93 whereby if the Governor is satisfied that a situation has arisen in which the government of a province cannot be carried on in accordance with the provisions of the Act, he may by Proclamation declare that his functions shall, to the extent specified, be exercisable in his discretion and assume to himself all or any of the powers of any provincial body or authority.

Section 52 specifies the special responsibilities which the Constitution confers on the Governor. The cumulative effect of the list of special responsibilities justifies the statement of Sir Samuel Hoare that it covers the entire field of administration : the prevention of any grave menace to the peace or tranquillity of the province, the safeguarding of the legitimate interests of the minorities, the safeguarding of the rights and legitimate interests—whatever that may mean—of the members of the Public Services and their dependents, the prevention in the

sphere of executive action of discrimination against Britishers and British concerns, the peace and good government of partially excluded areas, the protection of the rights of Indian States and of their rulers, and the execution of orders or directions of the Governor-General in his discretion.

Other purposes besides these special responsibilities for which the Governor is to act in the exercise of his individual judgment are the appointment of the Advocate-General (Section 88), making or altering of rules or orders affecting the organization of the police force (Section 56) and the inclusion in the budget of grants for expenditure necessary for the discharge of his special responsibilities (Section 78).

It will be remarked that no special responsibility is imposed on the Governor for the finances of the province. As against this, Professor K. T. Shah goes so far as to say in his work on *Provincial Autonomy* that, if Sections 78 and 80 are read together with Section 82, what amounts to an overriding power regarding finance must be admitted to be vested in the Governor.

Finance and ' Law and Order ' were in fact the departments regarding which British interests tried their best to prevent transfer of power to Provincial Cabinets. Having failed in their frontal attack, by a series of flank attacks they succeeded in getting incorporated various detailed provisions whose cumulative effect very nearly approaches their original purpose.

This object was largely encompassed with the aid of the Joint Parliamentary Committee who admitted that " among other alterations in the White Paper, we have felt obliged to make a number of additional recommendations in regard to the Governor's sources of information, the protection of the police and the enforcement of Law and Order " (page 13).

The attempts of the British Indian Delegation to limit these inroads into responsible government failed, their suggestions being rejected almost *in toto*.

Justifying these retrograde moves, Professor Keith states :

> " The necessity of giving authority to the Governor is proved by the refusal of the Indian Legislature in September, 1935, to give permanent force to the legislation necessary to combat terrorism."

Sir Samuel Hoare, with that capacity of saying outrageously inaccurate things with the utmost *sang-froid* which he displays to great advantage, described the safeguards as ' signposts ' ; *apropos* of which description, a critic aptly declared :

> " Signposts are no doubt very convenient things, but when they are so scattered as to occupy almost every vantage point on the field, they become not only a nuisance but a dangerous impediment."

Another metaphor employed by Sir Samuel Hoare is that he regarded the safeguards " not as a stone wall that blocks the road but as a hedge on each side which no good driver ever touches but which prevents people from falling into the ditch." It does not seem to have occurred to him that they may on the contrary turn out to be boulders on the way impeding all progress.

On the other hand, even so moderate and conservative a politician as Sir Chimanlal Setalvad was driven by this accumulation of special powers to declare that " responsibility is buried in a pile of reservations, safeguards and discretions."

In this connection, one question that arises is whether, after all, the Constitution has made such a clean break with the system of Dyarchy embodied in the Act of 1919.

Speaking before the Joint Parliamentary Committee, Sir Malcolm Hailey, one of the most astute and experienced of Indian Civil Servants, and himself an ex-Governor, had thus posed the problem :—

> " Our difficulty arising from the existence of Dyarchy in the provinces was due to the fact that we are really, in effect, on both sides dealing with one common field of

> administration . . . . and it was because you had two diverse authorities dealing with the same field that the difficulties of Dyarchy arose."

Bearing in mind Sir Samuel Hoare's statement that the special responsibilities are " duties imposed upon the Governors that cover the entire field of administration," may we not justifiably conclude that the position of divided or blurred responsibilities still obtains ?

In order that the acts of the Governor-General and the Governors in their discretion or in the discharge of their special responsibilities should not be entirely irresponsible and free from control and check, the Act provided that for all such acts these satraps should be responsible to the Secretary of State and through him to the British Parliament.

After the inauguration of Provincial Autonomy, the question arose in both Houses of Parliament as to the right of members to ask questions regarding acts of the Provincial Governments as in the past.

The discussions arose out of the refusal in June, 1937, of the Minister to reply to a question about the communal disturbances at Lucknow on the ground that the matter was to be dealt with by the Ministry in the province concerned.

Lord Lloyd in the House of Lords and Mr. Winston Churchill in the Commons raised the issue and asked for an authoritative interpretation of the position.

On 17th June, 1937, Mr. Neville Chamberlain, the Prime Minister, made a considered statement in the House of Commons and arrived at the following conclusions :—

> " So far as the Ministers' responsibilities to the provincial legislature are concerned it will be entirely inappropriate if the House of Commons were to call in question or criticise by question and answer their policies and activities . . . . A broad general guiding principle ought to be adopted regarding the admissibility of

questions on Indian provincial affairs. Such questions ought not now to be regarded in order unless it is shown that either the action at issue has been taken by the Governor without consulting the Ministers or against their advice or in the alternative that the Governor is in possession of powers applicable to a case which he has failed to exercise. I also suggest that even this right ought to be used with discretion and restraint."

As we have seen already, Section 50 of the Act contemplates three categories of acts of the Governor of a province—those where he exercises his functions on the advice of his Ministers ; those where he is required by the Act to act in his discretion ; and the intermediate category where, having secured the advice of his Ministers, he is left free to exercise his individual judgment. But do these really exhaust the entire field of action of the Governor ? Apparently so it was contemplated by the framers of the Act. All the same, it is possible to think of some situations arising where a function of the Provincial Governor may not fit into any of the three compartments.

Take, for instance, the appointment of Judges of the High Courts. While substantive appointments are made by the King-Emperor, temporary and additional appointments are made by the Governor-General in his discretion under Section 222 of the Act. In so doing, it is a matter of practice for the Governor-General to consult the Governor of the Province concerned.

The question arises : should the advice or recommendation of the Governor be given in accordance with the advice of his Ministers or should it be his own personal choice ?

Advising the Governor-General in this matter is nowhere included in the Governor's discretionary powers nor in the functions regarding which he has to exercise his individual judgment. It can be argued, therefore, that this function forms part of that residue regarding which, according to Section 50(1) of the Act, the Council of Ministers is to " aid and advise the

Governor." The transfer of Law and Order to the popular Ministry is complete under the new Constitution, subject to the reservations regarding the police force, crimes of violence and sources of information regarding such crimes which are made in Sections 56, 57 and 58 of the Act respectively. It may, therefore, be argued that it would be improper for the Governor to make any recommendation to the Governor-General behind the back of his Cabinet or at least of his Judicial Minister.

On the other hand, it can be contended that appointments of temporary or additional Judges of the High Court are to be made by the Governor-General in his discretion and that when he consults the Provincial Governor he consults him personally and not because the Act asks him to do so. It may be sought to buttress the argument with the further consideration that the Constitution aims at the independence of the judiciary, which would hardly be advanced if the Provincial Cabinet were to recommend their own nominees. This contention does not, of course, rule out the possibility of informal consultation with the Judicial Minister on the part of the Governor.

It appears that in a certain province this matter did in fact come to a head, a member of the interim Ministry which was in office from April to July, 1937, resenting the Ministers being ignored and proposing that the Federal Court should be moved for an authoritative interpretation of the position. It is doubtful whether such a reference to the Federal Court could be made under Section 204, because, even though the term 'federation' in that section is held, by virtue of Section 313(3), to cover the Governor-General, here no question can be said to be in issue "on which the existence or extent of a legal right depends." It seems, however, that the same purpose would be served by resorting to Section 213, provided the Governor-General could be persuaded to ask for the Federal Court's opinion. For some reason or other, however, this rather knotty point has not been carried as yet to the Federal Court.

CHAPTER VI

The Initial Impasse

BEFORE we can attempt to examine how the Provincial Governments have functioned in the past two years we shall have to make a digression and refer to the crisis that arose at the very commencement of the new regime. This crisis was the result of grave misgivings as to the attitude of the Governors towards their Ministers should the Congress accept office. It lasted for three months and the functioning of Provincial Autonomy was made possible only after it was resolved to the satisfaction of the popular party.

The elections to the Provincial Legislatures early in 1937 had resulted in the Congress securing a majority in the lower House in six out of the eleven provinces, while in one or two others it was the biggest single party and well within reach of securing a majority.

This result produced the intriguing problem of how the Congress would utilize those majorities. The resolution of the Congress Session at Faizpur had condemned the Government of India Act lock, stock and barrel. It had declared that the Congress contested the elections to the legislatures set up under the Act for the sole purpose of combating and wrecking the Constitution. It had been silent, however, on the question of whether for the purpose of destroying the Constitution it was prepared to authorize the formation of Cabinets where it controlled the Legislature in a particular province. On this question, a long-drawn controversy had been in progress between the different elements in the Congress, the more constitutionally minded being inclined to acceptance of administrative office and responsibility, the Congress Socialists and other radicals being implacably opposed to such an adventure.

At last, in March, 1937, the All-India Congress Committee met in Delhi to take the fateful decision. By a majority, the

Committee adopted a resolution, the material portion of which reads as follows :

> " And on the pending question of office acceptance and in pursuance of the policy summed up in the foregoing paragraphs, the All-India Congress Committee authorizes and permits the acceptance of office in provinces where Congress commands a majority in the legislatures provided that the leader of the Congress Party in the Legislature is satisfied and is in a position to state publicly that the Governor will not use his special powers of interference, or set aside the advice of the Ministers in regard to their constitutional activities."

This formula, which was adopted by the All-India Congress Committee and which owed its origin to Mahatma Gandhi, left the position very nebulous indeed, but it was generally welcomed. The then Under-Secretary of State for India, Mr. R. A. Butler, speaking at a meeting of the Parliamentary Conservative Committee for India, remarked that the Congress decision was a healthy sign of realism and would result in the possibilities of the new Constitution being tried out.

Unexpected developments followed, however, when in the course of the next few days the Governors of provinces with Congress majorities called on the respective party leaders to form Cabinets and were faced with demands for assurances.

The specific nature of the demand, which was uniform in all provinces, can be gathered from a reference to it in the course of a statement by the Governor of Bihar :

> " Mr. Sinha . . . . stated that he could only accept the invitation to form a Ministry if he were able to issue a statement containing the words : ' I have been assured by His Excellency that he will not use, in regard to the constitutional activities of the Cabinet, his special powers of interference or set aside the advice of my Cabinet.' "

This demand was equally uniformly resisted by the Governors who were obviously acting under instructions from the British Government. The *communiqué* issued by the

Secretary to the Governor of Madras is typical of the Governors' attitude :

> " On 25th March, the Governor invited Mr. C. Rajagopalachar, leader of the Congress Party in the Madras Legislature, to assist him in forming the Ministry.
>
> " Mr. Rajagopalachar at his first interview intimated that he should not accept the invitation unless an assurance was given by the Governor that he would not use his special powers or exercise the functions which are by law left to his discretion or individual judgment.
>
> " His Excellency replied that it was impracticable for constitutional reasons for him to divest himself of the responsibilities and duties which have been placed upon his shoulders by Parliament and that it was therefore not within his power to give any such guarantee. At the same time His Excellency intimated Mr. Rajagopalachar that he could rely upon receiving all possible help, sympathy and co-operation in the event of his forming the Ministry . . . .
>
> " His Excellency . . . . wishes to make it plain to the public that the decision is that of the Congress Party themselves, that the terms of the statute are mandatory and that the obligations imposed by the Act and by the Instrument of Instructions on Governors in respect of the use of special powers are of such a nature that even if he wished to relieve himself of them, it would not be in his power to do so. On the other hand, His Excellency wishes to state as representative of the King-Emperor in this presidency that he is above party politics altogether and that within the four corners of the Government of India Act he will always be willing and indeed anxious to extend the utmost help, sympathy and support to any Ministry from whatever section of political opinion it may be drawn.
>
> " At the present juncture His Excellency believes that time should be given for reconsideration of the position.

An interim Ministry will therefore be formed at once in order that the King-Emperor's Government may be carried on and His Excellency hopes that by thus providing a period for such reconsideration, it will eventually be found possible to form a Ministry which will command the confidence of the present Legislature."

The most detailed and significant statement of the Congress case was made by Sjt. C. Rajagopalachar in reply to the *communiqué* of the Governor of Madras :

"I explained to him that I and my Cabinet should be given the fullest freedom of action inside the scope of Provincial Autonomy said to be given under the Government of India Act and that while we remained in office and undertake responsibility of government of the province, His Excellency should assure us that he would not use his special powers of interference or set aside the advice of his Ministers.

"I regret to say that beyond a general offer of goodwill and co-operation, His Excellency has refused to assist us with any assurance of non-interference, formal or informal . . . .

"I pointed out that what we wanted as a condition precedent to the undertaking of responsibilities was not amendment of the statute now and here or any extension of the limited scope of Provincial Autonomy but that even while safeguards remained intact as regards possible interferences from the Secretary of State and the Viceroy we should have a gentleman's agreement between His Excellency and me, whom he had called, that his own discretionary powers of interference as a Provincial Governor should not be put in motion. I explained that when a Provincial Governor invites me on the basis of the verdict of the electorate to form the Government and undertake responsibility, he has the right under the Act to give me an assurance of non-interference. That we felt as necessary

for the efficient discharge of that responsibility. If it be true that real discretion is given to the Governor of a province, it must be within his power to use it or not to use it and if he is convinced that we can get an atmosphere and the psychology necessary for the efficient discharge of Cabinet responsibility only by assuring non-interference he would use his discretion best only by non-use. To deny that right to the Governor of a Province is denial of Provincial Autonomy.

" The experiment was worth trying only if there was a clear indication on the other side of readiness to part with power at least in the sphere of a province and the refusal of this at the threshold is better for the nation than breakdown after passing through humiliating conditions suffered in silence. . . ."

Faced with the refusal of the Congress to form Cabinets, the Governors invited leaders of various minority groups to undertake the responsibility. Indeed, in the Frontier Province, despite the Congress being the biggest single party, the Governor invited Sir Abdul Quyum to form a coalition Ministry.

By 1st April, Cabinets were appointed in practically every province, including ' interim ' minority Ministries in the provinces in question.

On 31st March, 1937, came Mahatma Gandhi's explanation as the self-confessed " sole author of the office-acceptance clause " and " the originator of the idea of attaching the condition to office acceptance " :

" My desire was not to lay down any impossible condition. On the contrary, I wanted to devise a condition that could be easily accepted by the Governors. There was no intention whatsoever to lay down conditions whose acceptance would mean the slightest abrogation of the Constitution . . . .

" The object of that section of the Congress which believed in office acceptance was, pending the creation by means consistent with the Congress creed and non-violence

of a situation that would transfer all power to the people, to work offices so as to strengthen the Congress which has been shown to predominantly represent mass opinion.

"I felt that this object could not be secured unless there was a gentlemanly understanding between the Governors and their Congress Ministers that they would not exercise their special powers of interference so long as the Ministers acted within the Constitution. Not to do so would be to court an almost immediate deadlock after entering upon office. . . .

"Have I not heard Sir Samuel Hoare and other Ministers saying in so many words that ordinarily Governors would not use their admittedly large powers of interference ? I claim that the Congress formula has asked for nothing more . . . .

"It does, therefore, appear to be that once more the British Government have broken to the heart what they have promised to the ear. . . .

"By flouting a majority obtained through the machinery of their creation they, in plain language, ended autonomy, which they claim the constitution has given to the provinces.

"The rule, therefore, will now be a rule of the sword, not of the pen nor of the indisputable majority. Any way, that is the only interpretation which, with all the good-will in the world, I can put upon the Government's action, for I believe in the cent per cent honesty of my formula whose acceptance might have prevented the crisis and resulted in a natural, orderly and peaceful transfer of power from the bureaucracy to the largest and fullest democracy known to the world."

The first of April brought, on the one hand, a message from the King-Emperor :

"To-day the first part of those constitutional reforms upon which Indians and British alike have bestowed so

much thought and work comes into operation. I cannot let the day pass without assuring my Indian subjects that my thoughts and good wishes are with them on this occasion.

"A new chapter is thus opening and it is my fervent hope and prayer that opportunities now available to them will be used wisely and generously for the lasting benefit of all my Indian people."

On the other hand, the same day brought also a nation-wide *hartal* (general strike) as a protest against the introduction of the unwanted Constitution, accompanied by the arrest of a certain number of Congressmen in Delhi and Patna.

Jubilantly, Mr. K. M. Munshi declared that at the first touch of the popular will, "without firing a shot," the Constitution had fallen.

In the weeks and months that followed, a veritable tornado of speeches and articles and statements burst over India, mostly on the question whether the Congress demand or the Governor's refusal was justified and over the constitutionality of the interim Ministries.

The crux of the matter, so far as the main issue was concerned, was touched upon by Sir Hyde Govan, the Governor of the Central Provinces, when on 29th March, 1937, he thus posed the question :

"The issue is a simple one ; does the Congress accept those provisions (regarding the special powers of the Governors) or does it not ? "

A day later came a statement from the Rt. Honourable Srinivasa Sastri deploring the deadlock and condemning the blundering stubbornness of the British Government.

"The ingenuity of lawyers," he declared, "is quite equal to the task of devising formulæ which would have saved the scope and tenor of the law, while giving the Congress Cabinets the security from interference which they demand."

The Council of the Western India Liberal Association, which met on 31st March, 1937, with Sir Chimanlal Setalvad in the chair, took a different view. Having deplored the refusal of the Congress to take office and reiterated its dislike of many of the safeguards which it characterized as " the ugliest features of the Constitution," the Council went on to opine :

> " When the Act requires the Governor to act with regard to certain functions in his discretion it does not mean that it is open to him to refrain from exercising those functions. These functions and responsibilities are imposed on him by the Act . . . . He cannot, however, divest himself of those functions which are obligatory. Mr. Rajagopalachar is, therefore, asking for what he himself disowns, namely, the amendment of the Statute.
>
> " It is not therefore constitutionally or legally correct for the Congress Party to ask for the assurance in the form in which they made it or for the Governor to give such an assurance . . . . The condition in the form in which it was put was unfortunately drafted, for on the face of it it means and involves what Mr. Gandhi says he never intended."

This opinion was endorsed on 2nd April, 1937, by Sir Tej Bahadur Sapru :

> "On the legal side, I have no doubt whatsoever that the interpretation of the Act by the Governors is right and that they could not, so long as the Act stands on the Statute Book, contract themselves out of their statutory obligations and responsibilities . . . . He would not, if he agreed to such a proposal, be establishing a convention, he would be legislating."

A few days later, in the course of another pronouncement, Sir Tej lamented that " there is a strange fatality in our affairs and generally it takes the shape of formulæ which lead to unexpected results."

On 6th April, 1937, Lord Lothian wrote to the London *Times* stating that Gandhiji's statement seemed to him to be based

on a complete misunderstanding of the way in which the system of responsible government works in practice and of paragraphs 8 and 9 of the Instrument of Instructions to Governors. After giving illustrations from events in the Dominions, Lord Lothian concluded with a suggestion :

> " If Congress leaders take the course ordinarily adopted under responsible government and, without asking for assurances, accept office and formulate their practical proposals of reform, pass them into law and advise the Governor that they will be responsible for the consequences and for Law and Order, I think they will find themselves endowed with both power and responsibility for the government of their provinces."

On 8th April, 1937, Lord Lothian raised a discussion in the House of Lords by asking for information regarding the circumstances in which Congress leaders had refused office.

It was in reply to this query that Lord Zetland made his first pronouncement on the constitutional crisis.

> Reviewing the events of the past few days, the Secretary of State for India stated that the Viceroy with his full approval reminded the Governors that while they were fully entitled to offer—and indeed, he hoped they would offer—to the Congress leaders the fullest support possible within the framework of the Constitution, Parliament had imposed upon them certain obligations of which, without the authority of Parliament, they could not divest themselves.
>
> He then referred to the All-India Congress Committee resolution in which there seemed to him to be a certain ambiguity, particularly about the phrase " in regard to their constitutional activities."
>
> Lord Zetland characterized as " most surprising " Gandhiji's statements that his desire was not to lay down any impossible condition and that the Congress had really

asked for nothing more than what Sir Samuel Hoare had himself declared.

Lord Zetland said he had Sir Samuel Hoare's authority for saying that while Sir Samuel had often expressed the view that no occasion for the use by the Governor of his reserve powers need necessarily arise, he never uttered a word which could possibly suggest that he ever contemplated a Governor pledging himself in advance not to use his special powers.

According to the Secretary of State, Gandhiji's statement was so astonishing that it appeared explicable only on the assumption either that he had never read the Act and the Instrument of Instructions or the report of the Select Committee or that, if he had done so, he had completely forgotten, when he made his statement, the provisions embodied in those documents respecting the special responsibilities vested in the Governors.

Declaring that the demand made to the Governors was one which, without an amendment of the Constitution, they could not possibly accept, Lord Zetland illustrated his point by drawing attention to Section 52 of the Act and paragraph 8 of the Instrument of Instructions and pointing out that a reduction in the number of schools for a minority community by a Ministry would be clearly within the Congress formula for it would be legal and could not be described as other than a constitutional activity. So the Governor would no longer be free to protect the minority. It was precisely because it was realized that such an action would be possible within the Constitution, said Lord Zetland, that Parliament had inserted the safeguards.

The Secretary of State then proceeded to quote an Indian newspaper which had compared the Congress demand for non-interference by Governors to incendiaries demanding an assurance that fire engines would not be used to put out a conflagration they had started.

He concluded by stressing that the reserve powers were an integral part of the Constitution and could not be abrogated except by Parliament itself and the Governors could not treat the Congress as a privileged body exempt from the provisions of the Constitution by which all other parties were bound.

This speech of the Secretary of State banged the door in the face of any compromise or understanding. Pandit Jawaharlal Nehru described himself as " completely satisfied with the developments." The Left Wing in the Congress was frankly jubilant at what it thought was a knock-out blow to office acceptance.

Even the *Times of India* in an editorial chastised Lord Zetland for " lacking in tact and conciliatoriness."

On 11th April, 1937, came Gandhiji's reply to the Secretary of State's sabre-rattling speech :

" Lord Zetland's elaborate statement confirms my view and hardens the universal suspicion of the British statesmen's intentions . . . .

" My advice to the Congress to adopt my resolution on conditional acceptance of office was based on the assurance of the lawyers among Congressmen that the Governors could give the required assurance without infringement of the Act."

Gandhiji then went on to concede that lawyers seemed to differ on the point.

" I therefore invite them (the British Government) to appoint an arbitration tribunal of three judges of whom one will be appointed by the Congress, another by the British Government, with power to the two to appoint the third to decide whether it is competent for the Governors to give the required assurance described by me."

He ended :

> " I regret to have to say it, but to be true, I must say that Lord Zetland's speech is that of one who is conscious of his sword rather than his right."

Gandhiji's idea of a reference to arbitration of the constitutionality of the Congress demand for an assurance attracted a lot of attention.

An attempt to improve on it and make it more acceptable to the British Government was made by Sir P. Sivaswami Iyer, Sir Mohammed Usman, by the editors of the *Hindu* and of the *Madras Mail,* and by other distinguished publicists of Madras who, on 15th April, 1937, suggested that the question should be referred to the Judges Designate of the Federal Court as an *ad hoc* committee of eminent jurists for their opinion as they were the persons to whom, according to Section 213 of the Act, such references could be made.

In a statement to the London *Times* at about the same time, Gandhiji himself elaborated on his idea :

> " Lord Lothian's suggestion to refer the dispute to the electorate is sound if it can be proved to be workable and not prohibitively expensive.
>
> " The precedent I had in mind of arbitration was that of the reference by the Transvaal and the British Governments of the grievances of British Indians about the terms of the Transvaal Law III of 1885 to the Chief Justice of the then Orange Free State as the sole arbitrator."

A few days later, Gandhiji again spoke his mind. In an interview with the Press at Poona on 21st April, 1937, he observed :

> " What I want before the Congress accept office is an assurance, which I still hold to be within the power of the

Governors, that they will not interfere with the day-to-day administration of the Provinces."

Q.—" Do you mean that under no circumstances whatsoever can the Governor interfere if an emergency of a grave nature in his opinion arises ? "

A.—" I certainly do not mean any such thing. I can conceive a Minister making a stupid blunder so as to harm the people in whose name he is acting. A Governor's duty would then be plain. He would reason with his Minister and, if he did not listen, he would dismiss the Cabinet. The assurance contemplates non-interference, not non-dismissal. But dismissal, when there is a clear majority in the Assembly, would mean dissolution and a fresh election."

Again, a little later travelling in the train between Wardha and Nagpur, Gandhiji gave some illuminating answers :

Q.—" Where is the difference, if any, between your view and the assurance given by Sir Samuel Hoare and since emphasized in other quarters that the Governors' special powers would not ordinarily be used ? "

A.—" I am sorry to have to say that assurances of Ministers given in the House of Commons or elsewhere have been found to be meaningless on critical occasions. Therefore, what has been asked for is a definite gentleman's assurance, breach of which would carry consequences everybody would understand . . . .

" Again, the assurances which the Congress asks for are in connection with a definite programme placed before Governors with a wealth of detail which ought to disarm all suspicion as to Congress intentions. If, therefore, there is no difference, why is there all this hesitation to do the simple thing that has been asked for ? "

Q.—" Would you be satisfied with an assurance from the Governors on the lines given by Sir Samuel Hoare and quoted by you ? If not, why not ? "

A.—" I would be satisfied if the assurance is given with a definition of the word ' ordinarily ' which anybody can understand."

Q.—" Will you please explain the difference between non-interference and non-dismissal ? "

A.—" I do not want the Cabinet to be in the position of having to resign on the slightest pretext. For an honourable resignation there must be an honourable cause that anybody could see. If I have no assurance of non-interference, the Governor may submit his Ministries to pinpricks which they would feel but which may not give them an understandable cause to take to the public in justifying resignation. The same thing would apply to the Governors.

" They will have to think fifty times before dismissing the Cabinet . . . . As all the Ministers who worked under the Montford Reforms have testified, their position was made unbearable and humiliating and yet they were unable to resign, perhaps they would not—I don't know which was the cause."

On 26th April, 1937, Mr. R. A. Butler, the Under-Secretary of State for India, put an end to all speculation about the proposal for arbitration by declaring that the British Government was not ready to go to arbitration on this point.

At the same time, a prompt response was forthcoming to that part of Gandhiji's Poona interview where he had referred to the Congress programme having been placed before the Governors.

" It is certainly not the intention," said Mr. Butler, " that the Governors, by any narrow or legalistic interpretation of their own responsibilities, should encroach upon the wide powers which it was the purpose of Parliament to place in the hands of the Ministers and which it is our desire they should use in furtherance of the programmes they advocated."

Then came the resolution of the Congress Working Committee, which met at Wardha from 26th to 28th April :

" The Working Committee approves of and endorses the action that leaders of Congress Parliamentary Parties in the provinces took in pursuance of the resolution of the All-India Congress Committee of March 18, on being invited by the Governors of their respective provinces to help them in the formation of Ministries.

" In view of the fact that it is contended by British Ministers that it is not competent for Governors, without an amendment of the Act, to give the assurances required by the Congress for enabling Congress leaders to form Ministries, the Committee wishes to make it clear that the resolution of the All-India Congress Committee did not contemplate any amendment of the Act for the purpose of the required assurances.

" The Working Committee, moreover, is advised by eminent jurists that such assurances can be given strictly within the Constitution.

" The Working Committee considers that the pronouncements of the policy of the British Government made by Lord Zetland and Mr. R. A. Butler are utterly inadequate to meet the requirements of the Congress, are misleading and misinterpret the Congress attitude. Further, the manner and setting in which such pronouncements have been made are discourteous to the Congress.

" The past record of the British Government as well as its present attitude show that without specific assurances as required by the Congress, popular Ministers will be unable to function properly and without irritating interference. The assurances do not contemplate any abrogation of the right of the Governor to dismiss the Ministry or dissolve the Provincial Assembly when serious differences of opinion arise between the Governor and his Ministers. But this Committee has grave objection to the Ministers

having to submit to interference by the Governor with the alternative of themselves having to resign their office instead of the Governors taking the responsibility of dismissing them."

This was followed up on 6th May, 1937, by a speech from Lord Zetland in the House of Lords in marked contrast to his first performance :

> " The reserved powers of which so much has been made by the Congress will not normally be in operation. Indeed, they only come into the picture if he (the Governor) considers that the carefully limited special responsibilities laid upon him by the Instrument of Instructions are involved.
>
> " It would doubtless be too much to hope that occasions will never arise in which neither side can, with good conscience, give way. But if my picture of the working of the Government of India Act is true, and if the relations between the Governor and his Ministry are those of partners in a common enterprise, there can be no possible question of the Governors interfering constantly in the responsibilities and work of the Ministry."

After repeating the assurances given by Mr. Butler in the House of Commons, Lord Zetland proceeded :

> " In working the Constitution as far as is at present possible to judge, I find happy confirmation of the picture as I have always seen it. Both in the provinces in which the Ministries are working with majorities in the Legislature and those in which minority Ministries are functioning, a bold programme has been drawn up, as far as I know, without the smallest attempt on the part of any Governor to interfere.
>
> " Is it too much to hope that those who have so far hesitated to accept the responsibilities of office from a mistaken sense of fear lest they should be unduly hampered in their tasks will derive reassurance and encouragement from the object lesson provided by the actual working of

the Constitution in their midst ? I need hardly say that I hope devoutly and in all sincerity that it may be so."

This elicited a prompt reply from Gandhiji, who was interviewed at Wardha on 8th May, 1937 :

" So far as the tone is concerned, it is an undoubted improvement upon his last speech on the subject, but I fear that it is no contribution to the removal of the deadlock . . . .

" Surely it is no strain upon the Constitution or the Act for the Governors to give the assurance that, whenever a situation is created which to them appears intolerable, they will take upon their shoulders the responsibility of dismissing Ministers, which they have the right to do, instead of expecting them to resign or submit to the Governor's wishes."

On 1st June, 1937, again Gandhiji said at Tithal :

" I am very anxious that Congress should take office—but only if Government show their willingness to conciliate the Congress.

" If, as has been said, Lord Zetland has conceded all but the question of dismissal, the Congress asks the Government to come a little way to meet it . . . .

" The only obstacle, so far as can at present be seen, is the Congress demand that in the event of serious disagreement between a Governor and his Congress Ministers the Governor should dismiss them.

" I personally would be satisfied, however, if the Governor gave an undertaking that in such a case he would demand his Ministers' resignation."

His idea, said Gandhiji, was to make the Governor think fifty times before he took the responsibility of dismissing his Ministers. In other words, he added, to " take advantage of the ordinary human virtue—it may be weakness—of not wishing to look a fool."

> In any case, Gandhiji affirmed, the object of the Congress demand was to test the sincerity of the British Government. Did they want the Congress in office or did they not ? . . . . All the moves towards solving the impasse had come from the Congress. Now the Congress did not demand any legal change.
>
> But it was being talked at instead of being talked to . . . . If Government would not make a gesture, the deadlock must continue. The result might in the end be the application of Section 93, that is, the suspension of the democratic portion of the new Constitution. Gandhiji was prepared for that and its possible consequences. He preferred open oppression under a state of autocracy to veiled oppression of and interference with Congress Ministries.

About the same time, speaking in London, Lord Zetland expressed the view that it was a tragedy that many men of brilliant attainments and high ideals were being lost to the service of India as a result of failure to appreciate the actual relations between the Governors and Ministers contemplated by the Act. Mentioning Mr. C. Rajagopalachar's statement that while Congress in office would not avoid deadlocks should circumstances give rise to them, they would not themselves seek to create them, the Secretary of State thought there was common ground.

On 8th June, 1937, a debate was raised on the question in the House of Lords, in the course of which Lord Lothian expressed the opinion that public discussions which had taken place with regard to the nature of the Act had immensely cleared the air.

The difference between the protagonists to the controversy, according to Lord Lothian, was not now very wide. Under the system of responsible government, the difference between dismissal and resignation had practically disappeared in actual operation.

Lord Zetland in his speech dealt with Gandhiji's latest statement, which involved that if there was a serious difference of opinion between the Ministers and the Governors, where the Governor's responsibilities were concerned, the Governors should dismiss or call for the resignation of the Ministers.

> Lord Zetland did not think it would really be wise or in accordance with the intention of Parliament to lay down in those circumstances that the Governor must necessarily call for the resignation of the Ministers.
>
> If that had been the intention of Parliament, said Lord Zetland, it would have been said that, in so far as any special responsibility of the Governor was involved, he should, in the event of being unable to accept the advice of his Ministers, call upon them to resign. But the paragraph was not so framed. It said that if and so far as any special responsibility of the Governor was involved, he should exercise his individual judgment regarding the action to be taken.
>
> It was because Parliament contemplated that even if the disagreement was a serious one that could not be bridged it might very well be that the Governor would either wish to retain his Ministers or assent to the rest of their programme, or the Ministries, while disagreeing with the Governor, would wish to continue in office.
>
> Surely, declared the Secretary of State, it would be better to leave it to the Governors or the Ministers until a case arose.

A further gesture to the Congress was forthcoming in a speech by Lord Zetland to the Oxford University Conservative Association on 11th June, 1937.

> It had been suggested, said the Secretary of State, that the interpretation of the constitutional position that he had given in the House of Lords on 8th June amounted to a rejection of the peace offer by Mr. Gandhi.
>
> It was certainly never so intended and he was at a loss to understand how any such meaning could be read in it.

> There seemed to be two widely differing conceptions of the nature of the Provincial Government under the Act.
>
> Under the first conception, the Governor necessarily appeared as an aloof and hostile figure ; under the second, as a friend and collaborator. It was the second of these two conceptions that he had always cherished and that he was certain was the true one.

A general feeling of weariness with what was coming to be regarded as a prolonged process of hair-splitting was at this stage making itself felt.

On 11th June, 1937, the *Manchester Guardian* declared :

> " The time has come now (indeed it came some time ago) when the Legislatures should be summoned and negotiations begun once more directly with the Congress."

The following day, the *Daily Telegraph* echoed this suggestion with the remark that " long-range discussions and explanations have exhausted their usefulness."

When Mr. C. Rajagopalachar was interviewed on 16th June, 1937, his reply was :

> " There are days when it ceases to be useful and will actually be harmful to think aloud or issue statements. We should wait and see."

At last, the long-drawn argument was brought to a close by none other than the Viceroy himself.

On 21st June, 1937, the Marquess of Linlithgow issued a message to the people and the same night he broadcast a more intimate appeal. Both these pronouncements, despite their friendly approach, added nothing really to what Lord Zetland and the Governors had already said. In place of giving any assurance, the Viceroy talked round the Congress demand and argued against it.

> " Let me say briefly," declared the Viceroy, " how great in my judgment has been the value of the discussions

which have taken place in this matter in the last three months. These discussions have been of the utmost significance . . . .

" Three months' experience of the operation of the Constitution has conclusively shown from the legal point of view that . . . . those assurances are not essential to the smooth and harmonious working of the Constitution . . . .

" I have been intimately associated with the framing of the present Constitution . . . . The Act and the Instructions which must be read with the Act have been approved by Parliament . . . . These documents make it clear beyond any possibility of question that, under Provincial Autonomy, in all matters falling within the ministerial field, including the position of the minorities, the Services, etc., the Governor will ordinarily be guided in the exercise of his powers by the advice of his Ministers and that those Ministers will be responsible not to Parliament but to the Provincial Legislature. The only qualifications of this rule are in respect of certain specific and clearly defined matters."

Lord Linlithgow referred to the Governor's special responsibilities which he described as being restricted in scope to the narrowest limits possible. He then proceeded :

" Within the limited area of his special responsibilities, a Governor is directly answerable to Parliament whether he accepts or does not accept the advice of his Ministers. But if the Governor is unable to accept the advice of his Ministers, then the responsibility for his decision is his and his alone. In that event, Ministers have no responsibility for the decision and are entitled, if they so desire, publicly to state that they take no responsibility for that particular decision or even that they have advised the Governor in an opposite sense . . . .

" Of their nature, politics are dynamic, and to imagine that their expression in terms of a written Constitution can

render them static would be utterly to disregard the lessons of history and indeed the dictates of commonsense . . . .

" I welcome . . . . the helpful suggestion recently made by Mr. Gandhi that it is only when the issue between a Governor and his Ministers constitutes a serious disagreement that any question of their severing their partnership arises. ' Serious disagreement ' is a phrase which it is possible to define and to interpret in various ways. But the general sense is clear enough . . . . The matter involved must be of really major importance. It must, I would myself say, be of such a character that a Ministry would feel that their credit and their position were hopelessly compromised . . . . I readily agree that where on such an issue arising and the Governor and his Ministers having both approached the matter, as I am confident they would, with open minds and with a full sense of responsibility—the Governor, in so far as his special responsibilities are concerned, to Parliament, the Ministry to the Provincial Legislature—no agreement could be reached, then the Ministry must either resign or be dismissed. As between resignation and dismissal, normal constitutional practice leans very heavily to the side of resignation . . . .

" The suggestion that the Governor should in certain circumstances demand the resignation of his Ministers is not the solution provided by the Act and therefore it will not be possible for Governors to accept it. Both resignation and dismissal are possible, the former at the option of the Ministers and the latter at the option of the Governors. But the Act does not contemplate that the Governor's option should be used to force the Ministers' option and thus to shift the responsibility from himself . . . . I feel no doubt whatever myself that . . . . deadlocks need not be anticipated in view of the anxiety of all Governors—not merely not to provoke conflicts with their Ministers, to whatever party their Ministers may belong—but to leave nothing undone to avoid or to resolve such conflicts."

The Viceroy then asserted that the Constitution of 1935 stood as the only complete and homogeneous scheme of political reform before the country and concluded with what was construed as a threat :

" But if what I should regard as a deplorable outcome should emerge from the present situation and if party and responsible government should as a consequence be suspended in a number of provinces, it might, however much we might all of us regret it, be beyond the power of any of us to reverse the circumstances that must then supervene."

As if to underline the importance of this pronouncement, the London *Times* said on the following day :

" The Viceroy's message must be regarded as the final authoritative interpretation of the intentions of the Government of India."

While the Indian Press drew attention to the ' wasp sting ' in the tail of the message, Sir Tej Bahadur Sapru, who was then in London, declared that the Viceroy had gone to the farthest limits possible within the Government of India Act.

On 26th June, 1937, Lord Erskine, the Governor of Madras, said at Coonoor :

" I do not recollect one single occasion during the time I have held my present office when I have found myself obliged to differ to the point of taking individual action from my Ministers on any question of policy, either under the old Constitution when the Ministry were in charge of what were known as Transferred Departments or under the present Act under which all departments are transferred . . . .

" Whatever party may be in office in the future, it is certainly my desire to give them all help and assistance in my power . . . ."

The Congress response to this took the form of a visit to the Governor at Ootacamund by Mr. C. Rajagopalachar. What

transpired at this significant interview was not known, but by the time the Congress Working Committee met at Wardha, it was generally believed that the decision would be to end the deadlock.

On 7th July, after protracted discussions the fateful decision was taken. Reported incorrectly in the Press to be unanimous, the resolution that was in fact arrived at in face of the dissent of Pandit Jawaharlal Nehru, the President, and the two Congress Socialist members, Acharya Narendra Dev and Mr. Achyut Patwardhan, read thus :

> " In accordance with these directions (given by the All-India Congress Committee on 18th March, 1937,) the leaders of the Congress Parties who were invited by the Governors to form Ministries asked for the necessary assurances.
>
> " These not having been given, the leaders expressed their inability to undertake the formation of Ministries ; but since the meeting of the Working Committee on 28th April, 1937, Lord Zetland, Lord Stanley and the Viceroy have made declarations on this issue on behalf of the British Government.
>
> " The Working Committee has carefully considered these declarations and is of opinion that though they exhibit a desire to make an approach to the Congress demand, they fall short of the assurance demanded in terms of the All-India Congress Committee resolution as interpreted by the Working Committee resolution of 28th April, 1937 . . . .
>
> " The Committee feels, however, that the situation created as a result of the circumstances and events that have since occurred warrants the belief that it will not be easy for the Governors to use their special powers.
>
> " The Committee has, moreover, considered the views of Congress members of the legislature and Congressmen generally.
>
> " The Committee has therefore come to the conclusion and resolves that Congressmen be permitted to accept office where they may be invited thereto . . . ."

On 9th July, 1937, the interim Ministry in the Central Provinces set an example by resigning and on the 11th a Congress Cabinet was in office. Similar changes took place in the other provinces with Congress majorities.

An interesting side issue which emerges from the developments of those months is regarding the position of these interim Cabinets. Were they constitutional or were they, as Mr. C. Rajagopalachar put it, " a fraud on the Statute " ?

It must be conceded at the outset that the Government of India Act itself does not give any direct answer to these questions. Nowhere does it contemplate or foreshadow such an unprecedented situation arising where the majority party in the Legislature refuses to assume the reins of office.

The discussions must therefore centre round Clause 8 of the Instrument of Instructions to the Governors, which prescribes :

> " The Governor shall use his best endeavours to select Ministers in the following manner, that is to say . . . . in consultation with the person who in his judgment is likely to command a stable majority in the Legislature, to appoint those persons (including, so far as possible, members of important minority communities) who will best be in a position collectively to command the confidence of the Legislature."

Congress and public opinion in India in those months generally agreed with Mr. C. Rajagopalachar's declaration that the Act stood " torn to pieces by this arrangement."

On 29th April, 1937, the Working Committee of the Congress expressly passed a resolution opining, *inter alia,*

> " that the formation of these Ministries by the Governors is unconstitutional and repugnant to the conception of autonomy and in total defiance of the overwhelming public opinion in each of these provinces."

And indeed a little earlier Gandhiji had suggested that the legality of the interim Ministries should also be referred to the arbitration tribunal proposed by him. The most eminent

authority among the constitutional critics of these minority Ministries was Professor Keith who referred to the institution of minority governments as a negation of responsible government and objected to it as an attempt to conceal the breakdown.

On the other hand, the British Government throughout adhered to the view that the Governors did the right thing, legally and constitutionally, in calling on minority groups to form Cabinets to carry on in the hope, as Lord Erskine, the Governor of Madras, phrased it, " that by thus providing a period for such reconsideration, it will eventually be found possible to form a Ministry which will command the confidence of the present Legislature."

In his speech on 9th April, 1937, in the House of Lords, Lord Zetland had given expression to the refusal of the British Government to accept the suggestion that the appointment of such Ministries was in any way unconstitutional. On 1st June, 1937, the Secretary of State for India paid a tribute to the way in which the new Governments in the provinces were facing their tasks, perhaps in response to the statements made by certain Ministers complimenting the Governors on not using their powers to impede their plans.

This exchange of compliments provoked Mr. C. Rajagopalachar to indulge in a little playful gibe :

> " The interim Ministries all over India are eloquent about the liberty they enjoy in governing the land without any interference from the Governors. Sixty-five days' circus has shown them conclusively that the lion will not bite them though they put their head into his mouth ; but what is true of circus lions and circus assistants is not necessarily true between the Governors and the Congress."

Easy as it is to share in the annoyance and the contempt in which Congress opinion held these interim Ministries, it must be conceded that their legality was beyond question.

A fair amount of confusion on the point appears to have been caused by their very name which originated with a reference by a Governor to one such ministry as an ' *ad interim* ministry.'

This gave rise to the impression that such a Ministry was of a kind different from the normal sort of Ministry.

Actually, no such peculiar species is known to the law. There is only one kind of Council of Ministers and that is the one appointed by the Governor holding office 'during his pleasure' in accordance with Section 51 of the Act.

It is true that the Governor has in this connection to be guided by Clause 8 of his Instrument of Instructions which we have quoted above, but Section 53(2) of the Act expressly provides that "the validity of anything done by the Governor of a province shall not be called in question on the ground that it was done otherwise than in accordance with any Instrument of Instructions issued to him."

There can therefore be little doubt that legally the Governors were perfectly within their rights in constituting these minority governments.

Professor Keith's criticism is based on a false assumption. It presupposes that the Constitution embodied in the Government of India Act has a democratic basis. Actually, the Act is saturated through and through with a desire to perpetuate an undemocratic and alien rule.

What, under the Act, was the choice before the Governors faced with the refusal of the Congress to form Cabinets? Either the step they took or the Proclamation of a failure of the constitutional machinery under Section 93 of the Act.

This latter course would undoubtedly have suited those who held the view that, designed as it was, the sooner the new Constitution was buried the better. Mr. Rajagopalachar had, for instance, stated as early as 2nd April that the skilful legal minds who gave the finishing touches to the Government of India Act had contemplated this very deadlock and had provided that the Governor could carry on with a body of advisors selected and appointed for the purpose by him. If Sir Kurma Reddi had agreed to serve in this capacity, instead of calling himself a minister, there would have been no illegality in the

matter. The position would then have been honest, even though it exposed the breakdown of the Constitution.

But the British Government could hardly be expected to oblige Mr. Rajagopalachar, not to mention more intransigent Congressmen, and they rightly from their own point of view took advantage of the six months' respite given them by Section 62(3) of the Act which allows that interval of time to elapse before the summoning of the first session of the Legislature.

Minority governments are by no means unknown in Parliamentary systems of government. Sir Tej Bahadur Sapru has, for instance, given a list of minority governments in England, showing that they were in office from 1839 to 1841, from 1846 to 1852, from 1858 to 1859, from 1866 to 1886, from 1886 to 1892, from 1910 to 1915, in 1924 and from 1929 to 1931.

Whether, therefore, with a view to giving the majority time to reconsider their decision or to give the minority time to consolidate their position in the Legislature or the province, the Governor's action was in law unexceptionable.

Even making the terms of the Instrument of Instructions a test of *bona fides,* can it not fairly be urged that they did in fact " use their best endeavours " by inviting the leaders of the Congress Party which were in a majority to form Cabinets ?

On the other hand, may it not also be urged that if they really had used their best endeavours, they would have given the assurances asked for by the Congress leaders ?

This brings us to an assessment of the main issue as to whether or not the Governors were forbidden by the Act from giving the assurances in the terms laid down.

It must be conceded, on a careful consideration of all that has been said on both sides, that the Governors were within their legal rights in refusing to give the assurance asked for and further that it would have been against the spirit of the Act, while not against its letter, if they had agreed to surrender unconditionally and in advance their right and duty under the Act to exercise their discretion or their individual judgment in certain cases.

The special powers of the Governors, as the provisions of the Act make it super-abundantly clear, are meant by Parliament to be used for the protection of the various interests in response to whose demands they were provided.

The exercise of discretion has reference to every particular case, where any question of its use arises, after an examination of the position, not to a wholesale exercise or abandonment of all the special powers.

While, therefore, Gandhiji and the Congress Working Committee were justified in their protest that they did not ask for an amendment of the Act, they were certainly asking for something which involved, in Sardar Vallabbhai Patel's words, " widening the bounds of the Constitution."

The same considerations apply to the allied yet distinct issue that came to the fore as the controversy over assurances developed in its later stages. This was the demand advanced by Gandhiji that the Governor, whenever he contemplated overruling his Council of Ministers, should dismiss them from office. It is doubtful how far this demand was more tenable than the original demand for an assurance of non-interference. Actually, it was the same thing contemplated from a different point of view. It involves and implies that so long as the tenure of the Cabinet in question lasts, there shall be no overruling of the Cabinet. Any interference must be accompanied by a dismissal of the Cabinet which, in the case of a Ministry with a stable majority, would involve a dissolution of the Assembly and an appeal to the electorate.

In fact, what the controversy over the alternatives of resignation or dissolution centres on is the right of the Cabinet to demand a dissolution.

The right to dissolve is in England a prerogative of the Crown. In India, the Government of India Act gives the power to dissolve Provincial Legislatures to the Governor " in his discretion." What the Congress was asking, through its modified demand, was that the Governor should surrender his right to refuse a dissolution in the event of his overruling the Cabinet.

The trend of developments in England and in the Dominions has certainly been in the direction desired by the Congress. It is true that in England, Queen Victoria on several occasions refused to dissolve Parliament at the behest of the Prime Minister. Such a stand has not, however, been taken by any British monarch since, and it is difficult to imagine the King dismissing a Prime Minister with a firm majority in the Commons and yet refusing him an opportunity to appeal to the electorate. Such a step might well be the first step to a revolution or a counter-revolution. Mr. Asquith's argument in 1924 that Mr. Ramsay MacDonald, the Labour Premier, would not be entitled to a dissolution if defeated in the House of Commons was on a different basis altogether, because the Labour Cabinet was a minority administration existing at the mercy of the Liberal Party. Actually, however, when the Labour Cabinet was defeated in the House over the withdrawal of the prosecution against J. R. Campbell, a Communist, the King did agree to a dissolution which resulted in the notorious Red (Zinovieff) Letter election.

In the Dominions also, the right to a dissolution has been the object of constitutional struggles. One such incident occurred in Canada in 1926, when Lord Byng, the Governor-General, refused a dissolution to Mr. Mackenzie King, the Liberal Premier, when he lost the support of the Progressives who had kept him in office. A little later, however, Lord Byng thought it fit to agree to a dissolution when asked for by Mr. Meighen, the Conservative Premier, who had succeeded Mr. Mackenzie King but had soon been also defeated in the House. This discriminatory behaviour of the Governor-General was the subject of much criticism and he was accused of having been influenced by the British Conservatives who were then in power in England.

The Imperial Conference of 1926 made a drastic alteration in the position of Colonial Governors-General when it affirmed that they were " representatives of the Crown and not of His Majesty's Government in Great Britain." This had a distinct bearing on the use of such a prerogative as that of dissolving the legislatures. Once a Governor-General or a Governor is free

from the control of the Imperial Government, there can be no justification for him to exercise any discretion in meeting a demand from a retiring Prime Minister beyond what the Crown would exercise in England.

The point still remains as to whether the Congress was justified in seeking to get the prerogative of dissolution limited in the same way in the Indian provinces.

If full responsible government had been established in the provinces by the Government of India Act, such a convention would not only have been legitimate but absolutely essential, because, as Professor J. A. R. Marriott has insisted, the non-responsibility of the Crown or the Governor is one of the conditions essential to responsible government. What is established in the provinces by the Constitution of 1935 is, however, something very different. The discretionary powers and special responsibilities of the Governor make him part not only of the legal Executive, but of the political Executive as well. The special powers with which the Governor is endowed are meant to be used. There is no reason, therefore, why he should dismiss his Council of Ministers when he wants to exercise powers expressly given to him by the Act. He can well pass his orders and leave it to the Ministers to take their own course. If they choose to resign, he can attempt the formation of another Cabinet and, even if that fails to win the confidence of the Legislature, there is always Section 93 to help him to avoid the appeal to the electorate, unlike the position in England or in any country with a truly parliamentary form of government where a general election is the only way out of such an impasse.

The Congress demand that a Governor should dismiss his Ministers when he felt called upon to overrule them sought in reality to make the provincial electorate the final arbiter even in matters which the Act assigned to the Governor in his discretion or in his individual judgment and in respect of which it made him responsible ultimately to Parliament and the electorate in England. It was a demand for a transfer of power which was necessary in the national interest but to which the Government of India Act had expressly barred the way.

CHAPTER VII

Subsequent Working

It is in the background of the clarification that was achieved between April and July, 1937, that we should seek to examine the actual functioning of the provincial machine in the two years that have since elapsed.

At the very outset, it may be conceded that the Provincial Executives have functioned much more satisfactorily than was generally anticipated. To quote a tribute from no less a person than Gandhiji, the Governors have on the whole played the game. Whether, as many of the Congress Ministers believe, this is due to the caution with which they entered into office and the clarification that resulted during the months of delay owing to the demand for an assurance, or whether it is due to other causes, the fact remains that there has hitherto been the very minimum of interference by Governors with the work of their Ministers and it is difficult to discover any instance where the Governor has had to invoke his special responsibilities and overrule his Ministers. This appears to be true of all provinces, and particularly of Congress provinces. Even as between these latter, there is said to be just a shade of difference as between Bombay and Madras on the one side and the other provinces with Governors drawn from the Indian Civil Service on the other.

Indeed, so smooth have been the relations between Governors and their Councils of Ministers that one may hear both Congress and non-Congress Ministers say that even if the Governors had no overriding powers and were purely decorative heads like the King of England, they would feel no more free to do within the four corners of the Act anything they cannot do at present. By the limits of the Act are meant the powers of the Governor-General and the Government of India on the one hand, the statutory bars to action or legislation such as those in regard to discrimination and the Services, and the financial

limitations, which may be termed the external limits of Provincial Autonomy.

Even thus limited, the statement is a far-reaching one. It is also of interest because it means that the Ministers cannot plead an *alibi* such as : " What could we do ? If only the Governor had not obstructed us, we would have done all sorts of wonderful things ! "

There are many factors which may help to explain the absence of any major constitutional clashes beyond the one in U.P. and Bihar early in 1938.

The first element in the complex of reasons is undoubtedly the tug-of-war over the Congress demand for assurances which preceded the formation of stable Ministries in eight provinces. As one very eminent Congress authority put it to the writer, " we lost in form but we won the substance." His belief was that if the Congress had not held out for three months and brought the bureaucracy to a proper frame of mind, there would have been a lot of interference in the day-to-day work of the Ministers. As against this must be remembered the repeated statements on the part of both Governors and interim Ministers in 1937 that there had been no cases of the use of special powers during those months.

" Ask any honest interim Minister, if you can find one, and he will tell you a different story," remarked a Congressman *apropos* of that exchange of compliments when his attention was drawn to it.

Be that as it may, a much more likely explanation is that the interim Ministers, both by reason of their own political make-up as well as the absence of a legislative majority and popular support, were not likely to do anything which would necessitate interference by the Governors.

There are not lacking, even in the Congress, those who to-day would explain the harmony between Governors and Congress Ministries by suggesting that it is owing to the desire of Congress

Ministers to be 'good boys' or to play the 'statesmen' that the Governors have found no necessity for asserting themselves. According to this school of thought, the Congress leadership has avoided raising such inconvenient issues as are likely to lead to a clash with the Governors or with the Government of India.

The authoritative Congress view does not plead guilty to this charge. The Congress policy in office, according to this viewpoint, has been one of neither inviting nor evading deadlocks. If Congress Ministers have not, on the one hand, gone out of their way to raise issues simply for the sake of provoking the Governor to fall back on his special powers, neither have they, on the other hand, refrained from doing anything because they apprehended obstruction from the Governor. That there has been only one crisis means that in all other cases the Governors have yielded at a certain stage of the proceedings. It is not easy to say how far this is a correct representation of the position as it really obtains. It is possible to think of issues, though they may not be of much importance, which might well have been raised by Congress Cabinets and which would probably have led to the Governors falling back on their reserve powers.

Thus, Congressmen had during the controversy over office acceptance and in the course of the election campaign often said that they would, when in office, remove the hated Union Jack and fly the National Tricolour on Government buildings. Nowhere has this been done. Indeed, the very first resolution in any Provincial Legislature disallowed by a Governor was one of which notice had been given by a Congress member of the Bihar Legislative Assembly for flying the National Flag on Government buildings. This was in August, 1937, and though a Congress Ministry was in power this act of the Governor, of very doubtful validity, was allowed to go unchallenged. May it not then be legitimately suggested that on an issue like this a clash was deliberately shirked by the Congress ?

There are many, and they include even some Congress Ministers among them, who believe that this is a weak-kneed policy

and that if the Congress really meant to wreck the Constitution, as was its claim, it should have gone full steam ahead. This would no doubt have meant repeated use of special powers by Governors. The Ministers should then have taken advantage of the right to reveal these differences to the public which was conceded to them by the Viceroy in his statement of 21st June, 1937. Thus, a pile of such instances would have accumulated and the unreality of responsible government in the provinces would have been proved beyond cavil to the public mind. When the Congress decided to come out of office and resume the direct struggle for Independence, their conduct while in office would have already undermined the basis of the Constitution.

It is difficult not to feel a certain measure of sympathy for this argument. If wrecking the Constitution at the earliest possible date by rendering it unworkable is the only end kept in view, there is a logic in it which it is impossible to meet. It must frankly be admitted, however, that the real Congress policy has not been one of wrecking pure and simple—whatever Congress resolutions might have said. The policy has been one of seeking to expand the bounds of the Constitution by constitutional pressure from within rather than by assault from without and in the meanwhile to strengthen the Congress hold on the masses by ameliorative legislation in the way of tenancy laws, measures for debt redemption, Prohibition and labour legislation.

From the point of view of furthering such ends, the policy hitherto followed of selecting and pushing on with only important measures on which the Ministry is prepared to resign rather than be overruled, while at the same time not indulging in any pinpricks, is undoubtedly a sound one. It has the merit of preserving the prestige of the Congress and of not allowing the Governors to get into the habit of lightly countermanding the Ministers' orders. It is claimed that, save in the case of the United Provinces and Bihar crisis in February, 1938, the Governors have in consequence always yielded after a certain amount of preliminary obstruction, knowing full well that any

resort to reserve powers would lead to the resignation of the Cabinet. ' Special responsibilities ' have therefore hardly ever been referred to by Governors in their discussions with the Ministers.

This does not by any means imply that the Governor takes no hand in the work of administration or the preparing of legislation. There are at least two topics in which in all provinces he appears to have shown very keen interest, and those are Law and Order and the Services. In the case of Law and Order, great anxiety has been shown by Governors to see that the discipline of the police force is not impaired and that it remains a quasi-military organisation free from political influences.

A tenderness for the rights and privileges of members of the Imperial Services has also been a feature. Senior Civilians have in some cases shown a spirit of recalcitrance and obstruction under the unwanted Ministerial domination and, though not always, yet in some cases the Governors have not been averse to trying to protect the offending bureaucrats from the consequences of their obduracy. In fact, there appears to have developed a sort of rivalry between the Governors and the Cabinets to control the Services.

A third topic, which might have given rise to cases of the Governor's interference, has fortunately failed to do so. Appeals to Governors by minorities with grievances, real or imaginary, have not been infrequent, as with Muslims in the United Provinces, Central Provinces and Bihar, the Parsis over Prohibition and the Muslims over the Property Tax in Bombay, and the Hindus in the Frontier Province, but on the whole the Governors have shown marked reluctance to interfere, preferring to refer the aggrieved parties to the Ministry.

We may now mention some cases where, it is believed, conflicts between Governors and their Ministers have taken place and consider how such conflict has been resolved.

One such case was revealed to the public by Dr. Khare in a speech at Poona after he had ceased to be Prime Minister of the Central Provinces. Dr. Khare alleged that early in 1938 he had proposed that the 26th of January, being Independence Day, should be observed as a public holiday in the province, that the Governor had threatened to consider it an invasion of his special responsibility and that the Congress Working Committee had failed to back him up.

From what can be ascertained, it appears that in the argument between Dr. Khare and Sir Hyde Govan, the latter relied on his special responsibility under Section 52(1)(*a*) for "the prevention of any grave menace to the peace or tranquillity of the province, or any part thereof," and sought to bring the proposal within the scope of the section by saying that he had to look beyond the 26th of January, 1938, and that in later years the holiday might under a different regime degenerate into an occasion for disorderly demonstrations! This was undoubtedly a very far-fetched argument. The unfortunate part of the affair was that, on the eve of the 26th, Dr. Khare himself appears to have agreed that the matter should be dropped without even consulting his colleagues in the Cabinet. In fairness to Dr. Khare, however, it may be added that he was not the only one to drop the idea, the Bihar Ministry quickly dropping the proposal which had been mooted there also.

An interesting side issue raised by Dr. Khare's action was with regard to the propriety of his public disclosure. Dr. Khare stated that he could then bring the matter to light on the ground that he had ceased to hold office and was no longer bound by the Official Secrets Act. There evidently he erred in his reading of Section 5(1) of the Official Secrets Act of 1923. While technically bound to secrecy, however, Dr. Khare might have pleaded precedents furnished by distinguished British Cabinet Ministers who have indulged in the practice of writing their memoirs after retirement from high office. He might, for instance, have drawn attention to Earl Grey's *Twenty-five*

Years, and to that most consistent of offenders in the divulgence of Cabinet secrets, Mr. Lloyd George.

An illustration of the tendency on the part of the Ministers to encroach on the Governor's preserves is afforded by the conflicts in various provinces concerning the position of the Advocate-General, the powers with respect to whose appointment and dismissal are under the Act assigned to the Governor to be exercised according to his individual judgment.

Many of the new Ministries when they took office desired to have as their legal advisers those who shared their outlook and enjoyed their confidence. The attitude of the old incumbents and the Governors in question created in some cases a rather complicated situation. It is understood that in Bihar and in Bombay it was found possible, however, after some initial delay, to make it convenient for the Advocate-General in office to resign and to get the nominee of the Ministry appointed. Formally speaking, however, the Governors did not accept the Ministers' advice to change the Advocate-General. In another province, the Central Provinces, by contrast the old Advocate-General, who was appointed by Sir Hyde Govan before the Congress Ministry assumed office, is still in office despite the Ministry's desire to have a change. The result is perhaps to be seen in the fact that the Advocate-General has never been asked to attend the sessions of the Legislative Assembly. Apparently, he is never consulted by the Ministers and, in popular parlance, has been ' sent to Coventry ' !

One of the most delicate and difficult of tasks achieved by a Ministry was, by all reports, the restoration by the Bombay Ministry of lands confiscated from peasants owing to participation in Civil Disobedience. This was one of the measures specifically mentioned in the Congress Election Manifesto and a matter of honour for the Congress. On the other hand, a solemn assurance had also been given to the buyers of the lands in the name of Government that their ill-gotten lands would not be touched.

For a long time after the Cabinet resolved on the restoration of the lands to the original holders there was an impasse. Negotiations seemed to be proceeding endlessly. It was rumoured that the Commissioner of the Northern Division was not proving at all helpful to the Ministry. When, therefore, he was transferred to the new province of Sind as Governor it was believed in political circles that his transfer was not unconnected with the desire of the Ministry to get a move on with their plans in this connection.

In fact, a change in the mode of approach became visible at this stage ; the method of individual negotiations was dropped and legislation was introduced instead. The issue of expropriation seems to have been raised by the vested interests concerned and for some time it was apprehended that the Governor might not consent to the measure. But the determination of the Ministry to implement its election pledges won the day and the Bill duly became law.

It is said that the Governor's special responsibilities could hardly ever come into play unless something outrageous was attempted by the Ministers. How erroneous is this impression is revealed in a striking manner by a consideration, howsoever cursory, of a scheme for the Reconstruction of Local Self-Government prepared by Mr. Dwarka Prasad Misra, the Minister for Local Self-Government in the Central Provinces, and published for eliciting public opinion.

The essence of the scheme is the separation of the executive from the judiciary in the districts, the making of the District Council into the legislative and deliberative assembly for the district, the President of the District Council into the Prime Minister, and the district officials into the Secretariat for the Executive Committee of the District Council. A certain amount of decentralization is contemplated through the transfer of certain departments of administration from the province to the districts. Urban municipalities would count as districts for the purposes of this plan.

Now, this scheme of municipal reform which, whatever its merits or demerits, can hardly be said to be subversive of the Constitution or of the British *raj*, impinges, on examination, on a lot of special responsibilities and powers sacred to the Government of India Act.

Thus, the change in the functions of the District Magistrate-cum-Deputy Commissioner involved in the separation of his executive and the judicial functions touches on Section 246(1) of the Act which gives the Secretary of State the power to make rules regarding the number and character of civil posts which are to be filled by persons appointed by him. So too does the placing of the Deputy Commissioner, who has hitherto been the administrative head of the district, under the President of the District Council.

In fact, it may well be urged that more than one of the Governor's special responsibilities mentioned in Section 52 of the Act would be affected. The proposal that occurrences such as communal disputes should be transferred to the jurisdiction of the District Council would be held to affect the special responsibilities of the Governor under Section 52(1)(*a*) and (*b*).

The transfer of Public Order and the Police to the District Council could be an argument for bringing into play not only Section 52 again but also Section 57 which leaves the framing of police rules and regulations to the individual judgment of the Governor.

The proposal to appoint Honorary Magistrates on the recommendation of the President of the District Council affects the provisions of Section 256 of the Act.

This shows how all-embracing are the ' safeguards ' and how difficult it is to frame the most innocent scheme of reform without giving the Governor a score of reasons, if he so chooses, for obstructing it.

CHAPTER VIII

Crisis in the Constitution

WE have kept back for separate consideration the only known incident in connection with which Governors have actually countermanded the orders of responsible Ministers.

When in February, 1938, the Congress Working Committee met at Wardha, it was faced with the situation created by a hunger-strike on the part of political prisoners in Dacca prison in Bengal and in Hazaribagh jail in Bihar and in some Punjab prisons for securing their release. One of the hunger-strikers in Dacca jail had already met his death.

While publicly disapproving of the hunger-strike and stressing its anxiety to secure the release of all political prisoners, the Working Committee, it is believed, gave private instructions to Congress Ministries to expedite and complete the release of those still remaining behind bars, if necessary, by a threat of resignation.

A glimpse behind the bars showed that at that stage there were still 387 political prisoners and 300 detenus in Bengal, 44 in the Punjab, 23 in Bihar, 14 in the United Provinces, 10 in Assam, 6 in Madras and 3 in Bombay.

On 16th February, 1938, the country, which had till then not been taken into confidence, woke up to learn that the United Provinces and Bihar Ministries had tendered their resignations.

The *communiqués* issued by the Governors of both provinces revealed that the Ministers having refused, in face of the Governor's opposition, to modify their advice for the release of all political prisoners, the Governors reserved the matter for consideration and referred it to the Governor-General, who thereupon issued instructions to the Governors under Section 126(5) of the Government of India Act. In the light of these instructions, the Governors of the United Provinces and Bihar found themselves unable to accept the advice of the Ministers.

and the Ministers thereupon tendered their resignations. Thus, before the Congress could make it an all-India issue, the Viceroy had by his intervention made it one.

The Ministries' version of how the break came about is well set out in the letter that the United Provinces Premier, Pandit Govind Ballabh Pant, wrote to the Governor of the United Provinces on 15th February, 1938 :

> " As Your Excellency has now intimated to me and my colleagues that, in compliance with orders issued to you by the Governor-General under Section 126(5) of the Government of India Act, you are bound to reject the advice which we thought it our duty to tender to you, in regard to the release of politicals, we think the only course open to us is to tender our resignations, which we hereby do. The issue now raised is of the widest importance both from the constitutional and administrative point of view.
>
> " The release of political prisoners has formed a prominent part of the Congress programme throughout. It was distinctly mentioned in the Congress Election Manifesto ; and the electorate in overwhelming numbers had supported the Congress demand. The British Government must therefore have been aware of the Congress policy and its implications in regard to this matter. It is unthinkable that the Governor-General should not have realized that the Congress, whenever it accepted office, would take the earliest opportunity to implement the Congress programme and to honour its pledges. The Congress was invited to accept office with full knowledge of all these facts. An assurance was also definitely held out that the Congress in office would be free to carry out its programme."

After referring to the strange decision of the Governor, the letter proceeds :

> " The reasons which have weighed with the Governor-General in taking this decision are not known to us and, in spite of our request, Your Excellency has explained your inability to disclose them to us. The responsibility for

maintaining Law and Order in the province is that of the Ministers. No Council of Ministers can discharge its functions satisfactorily if its considered opinion is disregarded arbitrarily in respect of momentous questions strictly falling within its purview by an outside authority and when even the courtesy of mentioning the ground on which such interference is sought is not shown to it.

" It is inconceivable that the release of no more than 15 political prisoners . . . . can be a grave menace to the peace and tranquillity of any province in India . . . .

" The decision of the Governor-General is attributed to extra-provincial affairs and it is significant that action has been taken under Section 126 and not Section 54, which suggests that the Governor of the province does not consider there is any menace to peace and tranquillity inside the province itself . . . .

" This interference on the part of the Governor-General in the ordinary administration of the province raises a constitutional issue of the gravest import and, instead of promoting peace and tranquillity, is likely to imperil it not only in this province but elsewhere in India also . . . . We look upon this interference as an utter abuse even of the provisions of Section 126(5) and it brings vividly home to us the unsubstantial character of the autonomy which the provinces are supposed to enjoy . . . ."

That the action of the Governor-General was not taken without the support of the British Government was made clear in the course of a reply to a question by Lord Winterton, Under-Secretary of State for India, in the House of Commons, on 17th February, 1938.

Meanwhile, delegates were gathering at Haripura for the session of the Indian National Congress and the question at stake was whether the constitutional crisis should be localised or extended to other Congress provinces. A wag predicted : " Two Congress Ministries have been released, and others will be released soon ! "

On 16th February, Gandhiji made his first pronouncement :

> " The action of the Governor-General bewilders me and makes me suspect that this proposal of discharging the prisoners in question was merely the last straw and that the Congress Ministries in general had fatigued the British authority. I hope that my suspicion is groundless . . . . How I wish it was possible for the Governor-General to retrace his step and avert a crisis whose consequences nobody can foretell."

In the United Provinces and Bihar, the Governors were confabulating with leaders of opposition groups in an attempt to construct minority Cabinets. The Congress Ministers had been informed that their resignations could not be accepted till alternative arrangements had been made for carrying on the King's government.

An interesting comment on the situation came on 17th February in the form of a letter in *The Times* (London) from Lord Lothian :

> " It is difficult to believe that the release of a small number of political prisoners constitutes in itself ' a grave menace.' Surely the right course in cases of this kind is for the Governor formally to warn the Ministers about the dangers he fears, and make it clear to them that if their judgment with regard to their own capacity to protect life and property prove to be wrong and serious trouble occurs or threatens, he will not hesitate to use his powers and publish as his justification his warning to the Ministers in regard to the probable consequences of their action."

The British Press continued to devote attention to the United Provinces and Bihar crisis and on 19th February, 1938, *The Times* quoted Gandhiji's words to its representative at Haripura :

> " It is just the kind of interference which I had dreaded on Congress acceptance of office and which fear has become justified by recent events. . . .

"I hope, however, ... that somehow or other the mischief done will be undone. But it is of British making and the undoing has to come from the British side."

In a letter to the *Daily Herald,* Gandhiji added at the same time :

"I hope there is nothing to warrant another fear that has possessed me, namely, that the British authority has been getting tired, and feared—perhaps was alarmed over —the headway that the Congress and Congress Ministries are making along constructive lines."

At last, on 20th February came the decision of the All-India Congress Committee not immediately to extend the deadlock to other provinces but to give powers to the Working Committee to deal with the situation.

In the course of a long resolution, endorsed by the plenary session, the Congress declared :

"The experience of office by the Congress Ministries in the provinces has shown that at least in two provinces, the United Provinces and Bihar, there has in fact been interference in the day-to-day administration of provincial affairs . . . .

"The Congress approves of and endorses the action taken by the Ministers of the United Provinces and Bihar and congratulates them on it.

"In the opinion of the Congress, the interference of the Governor-General with the deliberate action of the respective Prime Ministers is not merely a violation of the assurance above referred to (viz., 'that there would be no interference with the day-to-day administration of provincial affairs by responsible Ministers'), but is also a misapplication of Section 126(5) of the Government of India Act . . . .

"The Congress does not desire to precipitate a crisis which may involve non-violent non-co-operation and

direct action consistent with the Congress policy of truth and non-violence. The Congress is therefore at present reluctant to instruct Ministers in other provinces to send in their resignations by way of protest against the Governor-General's action, and invite His Excellency the Governor-General to reconsider his decision, so that the Governors may act constitutionally and accept the advice of their Ministers in the matter of the release of the political prisoners . . . .

" When the Congress approved of acceptance of office with great reluctance and considerable hesitation, it had no misgivings about its own estimate of the real nature of the Government of India Act.

" The latest action of the Governor-General justifies that estimate and not only exposes the utter inadequacy of the Act to bring real liberty to the people, but also shows the intention of the British Government to use and interpret it, not for the expansion of liberty but for its restriction."

This resolution was unanimously accepted, the writer associating himself with it on behalf of the Congress Socialist Party, which was the spear-head of the Left Wing in the Congress.

The next move was obviously with the Government and on 22nd February, 1938, the Viceroy issued a statement on the matter. It commenced with an attempt to justify his action :

" Having regard to the circumstances, the essential necessity of considering the action on the adjoining provinces of the release of these prisoners, and to the fact that acceptance of the principle that terrorist convicts should be indiscriminately released without regard to individual considerations would be highly dangerous and, in view of the history of terrorism in the past, could not fail to give an impetus to fresh terrorist organization in Bengal, careful consideration left me with no choice but to conclude that the issues involved were such that it was incumbent on me

to issue an instruction to those Governors under the provisions of Section 126(5) of the Act."

Lord Linlithgow ended up, however, on a much more conciliatory note :

"Finally, and this I wish particularly to emphasize, there is no foundation for the suggestion that the action I have taken is dictated by a desire to undermine the position of the Congress Ministries . . . . Neither the Governors nor the Governor-General have any desire to interfere or any intention of interfering with the legitimate policy of a Congress or any other Government. The action taken in the present case leaves it open to Ministers, in consultation with Governors, to pursue the policy of release of prisoners ; and they need anticipate no difficulty now, any more than in the past, in securing the friendly and ready co-operation of Governors in individual examination.

"I am glad to think that in no quarter is there marked any disposition to extend the area of difficulty beyond the limits of the position which I have described and it is my sincere and earnest hope that it may shortly be possible to return to normality, and that in the two provinces concerned the Ministers, in discussion with the Governors, may find themselves able to resume their interrupted labours."

This provoked a rather sharp reply from Gandhiji who was by this time (23rd February) at Wardha :

"It reads like a special pleading unworthy of a personage possessing unheard-of powers.

"No one has questioned the propriety of examining the cases of prisoners to be discharged, but what I have questioned, and the Congress most emphatically questions, is the propriety of such examination by Provincial Governors in provinces said to be enjoying complete provincial autonomy. That duty and the right of examination belong solely

to responsible Ministers, as I understand the Government of India Act and the convention in responsibly governed colonies . . . .

" It is hardly graceful for His Excellency to quote against the poor Ministers their non-exercise of their undoubted power to prevent Governors from examining individual cases. The Congress resolution describes their forbearance as exemplary patience. I would venture to add that probably it was also the inexperience of the Ministers who were totally new to their task.

" I am afraid therefore that unless this crucial question is decided in favour of the Ministers it will be difficult for them to shoulder the grave responsibility that the Congress has permitted them to take over . . . ."

Gandhiji then proceeded to express his satisfaction at one thing in the Viceroy's statement which gave him hope that the impending crisis might be prevented, which was that Lord Linlithgow had left the door open for negotiations between the Governors and Ministers.

" In my opinion the crisis can be avoided," continued Gandhiji, " if the Governors are left free to give an assurance that their examination of cases was not intended to be a usurpation of the powers of the Ministers and that since they had armed themselves with assurances from prisoners they were free to release them on their own responsibility. And I hope that the Working Committee will leave the Ministers free, if they are summoned by the Governors, to judge for themselves whether they are satisfied by the assurances they may receive.

" One thing I must say in connection with the exercise by His Excellency of his powers under Section 126(5) in the light of his argument justifying the use of Sub-section (5) of Section 126.

" I have read the whole of it. It is entitled ' Control of the Federation over Provinces in certain cases.' Unless the sub-sections have no connection with one another, they are to be read independently of one another. My reading is that in the present case the exercise of powers under Sub-section 5 of Section 126 is a manifest misapplication . . . ."

Within a couple of days of this, the crisis ended with the withdrawal of their resignations by the United Provinces and Bihar Ministers, who had been sent for by the Governors immediately they returned from Haripura.

The basis of settlement is set out best in the joint statement issued on 25th February, 1938, by Sir Harry Haig and Pandit Govind Ballabh Pant, as Governor and Premier of the United Provinces, respectively :

" We have had a full discussion between ourselves about the present situation and the recent developments. We have arrived at an agreed conclusion and the Honourable Ministers are accordingly resuming their normal duties.

" The cases of certain prisoners, classed as politicals, have been individually examined and the Governor will soon be issuing orders on the advice tendered to him by his Ministers, to remit, under Section 401 of the Criminal Procedure Code, the unexpired portion of the sentences in each case and to order their release. The cases of the remaining prisoners are being individually examined by the Minister concerned and appropriate orders will be similarly passed thereon within a short time.

" We have also had a long discussion on the mutual relation between the Governor and the Ministers . . . . There is no reason to fear any usurpation of, or interference with, the legitimate functions of the responsible Ministers. We are both desirous of maintaining healthy conventions and with goodwill on both sides we hope we will succeed."

A *communiqué* in similar terms issued on 26th February by the Governor and the Prime Minister of Bihar stated *inter alia* :

> " The Honourable the Prime Minister has considered individually the cases of certain prisoners classified as political, and in accordance with the advice tendered by him as a result of this examination His Excellency the Governor is issuing orders directing the release of these prisoners and the cancellation of the unexpired portion of their sentences. The cases of the remaining political prisoners are also being examined by the Prime Minister and orders in regard to them will also be issued in a short time."

Thus ended, with what the *Searchlight* (Patna) described as the " unequivocal acceptance of the principle of complete ministerial responsibility," the most stormy chapter hitherto in the history of the working of this Constitution.

The only question that need usefully concern us in this connection is whether the Governor-General was justified in intervening by virtue of Section 126(5) of the Government of India Act with the decisions of the United Provinces and Bihar Ministries.

That section provides that " the Governor-General, acting in his discretion, may at any time issue orders to the Governor of a province as to the manner in which the executive authority thereof is to be exercised for the purpose of preventing any grave menace to the peace or tranquillity of India or of any part thereof."

It is clear that this special responsibility is wider in its scope than that of the Governor under Section 52 where it is the peace and tranquillity of the province or any part of it which alone are to be safeguarded and wider also, therefore, than the Governor-General's special responsibility under Section 54.

Indeed, the Joint Parliamentary Committee in their report make it clear that the need of a wider safeguard was felt and the sub-section was designed to meet it :

> " The Governor of a Province is to have a special responsibility for the prevention of any grave menace to the peace or tranquillity of his own province, and we think that, but for the proposal to which we have referred, his special responsibility for securing the execution of orders lawfully issued by the Governor-General would necessarily be read as referring to the execution of orders lawfully issued by the Governor-General within the sphere of the Governor's statutory functions. But, to take one example which occurs to us, a conspiracy in one province to disturb the peace or tranquillity of another might well be outside the Governor's special responsibility for the prevention of any grave menace to the peace or tranquillity of his own province ; and, since we have no doubt that an ultimate and residuary responsibility for the peace and tranquillity of the whole of India must rest in the Governor-General, it is plain that the latter's power to give directions to a Governor should be wide enough to cover this case and that it should be obligatory on a Governor to give effect to these directions, even though it is the peace of a neighbouring province and not his own which is endangered."

Considering that in this case, responsible Ministers with strong and stable majorities were prepared to take responsibility for the consequences of their policy in releasing some thirty-seven political prisoners in all, the only possible justification for the Governor-General to intervene would be the repercussions of such a release in other parts of the country. This view is borne out by the fact that the Governors of the provinces in question did not choose to use their powers under Section 52(1) of the Act and that the Governor-General did not act under Section 54.

Extra-provincial considerations appear to have entered into the Governor-General's act. Whether he acted at the instance

of the Sikander Hyat Khan and Huq Ministries is not known but, if this view of the situation is correct, there cannot be any doubt that the Governor-General felt that he was acting in the interests of the Bengal and Punjab Governments, who had a large number of politicals on their hands whom they were not prepared to release.

It needs a strong imagination to be able to picture a state of grave menace to peace or tranquillity in Bengal or Punjab just because politicals had been released in Bihar and the United Provinces. What the Governor-General actually did, therefore, was to misapply his powers in his anxiety to prevent embarrassment to the Bengal and Punjab Governments.

In the course of the statements on the side of the Governors and the Governor-General, the ground was shifted back to the Provinces in question and it was sought to be made out that the real objection was not to the release of the prisoners but to an immediate release of all the prisoners. The need was repeatedly stressed of examining the individual cases of prisoners. This in fact appears to have been done. The crux of the matter was a little different—and that was as to who should examine and decide on the cases, the Governors or the Ministers. The joint statements issued by the Governors and the Premiers in closing the incident show clearly that this essential point was won by the Ministers.

CHAPTER IX

The Prospect

It is much too early yet to pronounce on the working, from the constitutional point of view, of the Constitution that came into force in 1935. That part of it which is concerned with the Central Government still remains on paper and it is highly problematic if it will ever be given effect to in its present form. As regards the provincial portion, it is not within our scope to draw up a balance-sheet of the achievements and failures of the provincial administrations. What we can essay in concluding our review of the Constitution and its working is to consider the indications as to the future of this Constitution and the way in which it is likely to develop, if allowed to do so.

The scheme of government embodied in the Government of India Act of 1935 has been described as " the longest and most complicated constitution in the world." If that is so, it is hardly inappropriate, considering it is a Constitution devised for one of the biggest and most complex countries in the world. Opinions may vary widely, of course, about the way in, and the extent to, which this Constitution meets the needs of this country.

Lord Lothian, writing in 1938 in the *Observer* on " The New India " made the claim, for instance, that the Act, " with all its anomalies corresponds far more closely to the present-day realities in India than its Indian critics are inclined to admit."

Place in juxtaposition to this, for instance, the resolution moved in the Legislative Assembly in the United Provinces in September, 1937, by the Prime Minister, Pandit Govind Ballabh Pant :

> " The Assembly is of opinion that the Government of India Act, 1935, in no way represents the will of the nation and is wholly unsatisfactory as it has been designed to perpetuate the subjection of the people of India. The

Assembly demands that this should be repealed and replaced by a Constitution for a free India framed by a Constituent Assembly elected on the basis of adult franchise which allows the Indian people full scope for development according to their needs and desires."

Here we have in a nutshell the two contending views of the Constitution and of India's political development. Which will History vindicate ?

One's reading of the realities of to-day is bound considerably to affect one's vision of the future.

Here is a rosy picture drawn soon after the Constitution started functioning normally in the provinces by the Rev. J. S. M. Hooper in the *International Review of Missions* :

"A good start has been made after the preliminary months' manœuvring for position and the clarification of issues that resulted from it ; the conditions of continued success are present in the spirit of co-operation and of eager service that has been shown by the Governors of the provinces, the members of the Services and the newly appointed Ministers. Speaking generally . . . . most of the Ministers have approached the tasks of administration with humility and courage and with a determination to deal thoroughly with the real problems of the country . . . . The Indian governments in power are using that power for the service of the people . . . ."

Even more jubilant was the note struck by Lord Zetland when, at Torquay on 18th November, 1938, he said in exultation :

"Men who a few years ago were at daggers drawn are working together in cordial co-operation to-day . . . . Congress Ministers, some of whom were not so long ago in prison for deliberate defiance of law, are now in office directing the policy and administering law. And British and Indian members of the Civil Services and police force, who were instrumental in imprisoning them, are now

working happily under them. Has that not been worth doing ? "

On the other extreme is such a view as that expressed by Professor Keith when he wrote :

> " It is not surprising that neither gratitude nor co-operation is forthcoming for a hybrid product such as is the provincial system of special responsibilities and acts to be done according to individual judgment . . . . If the source was tainted, it cannot be a matter of surprise that the stream is poisoned."

The truth, as usual, appears at present to lie between the two extremes. The Constitution of 1935 has not, in fact, provided in its working any major surprises. If, on the one hand, it has justified the hopes of its framers that it would work fairly smoothly, it has, on the other hand, not belied the fears of those who saw in it a dangerous snare in which the movement for national independence would be enmeshed. The fissiparous tendencies this Constitution encourages, the provincial, communal and sectional forces it releases have already succeeded to a material degree in diverting attention from the country's main political objective.

" *Hanooz Delhi door ast* " (Delhi is still far off) is an old Indian adage. *Swaraj* at Delhi is far off, and meanwhile, for local position and power and patronage, squabbles and petty struggles are rampant.

Another factor that hampers the march to Delhi is that the scheme has operated in the Congress being fastened with the responsibilities of administration without real power to put into effect major measures for the political and economic emancipation of the people.

Not only do the Governor's discretionary powers and his special responsibilities eat into the reality of responsible government, not only do his legislative powers negate the supremacy of the legislatures even in the sphere of legislation

allotted to them by the Act, but the provisions of the Act also militate against anything substantial being achieved in the way of political or economic freedom for the people. The power of the purse, which is in the last analysis the very root of the authority of a popularly elected legislature, is bestowed on the Provincial Legislatures in such stinted and truncated fashion that the dice are heavily loaded against those who seek to make Provincial Autonomy yield results. The way in which the sources of revenue have been allocated as between the Central Government and the Provinces has resulted, as one critic has put it, in making " all provinces deficit provinces." Certainly, the scheme of 1935 has left untouched and unsolved the fundamental problem of Indian finance—the securing of adequate financial resources for the provinces.

The new administrations have from the start been faced with the tasks—both unpleasant—of retrenchment on the one hand and the levying of additional taxation on the other, and it may well be that the orange of Provincial Autonomy will soon be found to have been squeezed dry and will be discarded even by those who have hitherto shown a partiality for it.

It is not suggested, of course, that the Central Government, even a democratic Central Government, would not normally require funds for its functioning. But what is asserted is that the prosperity and even the solvency of the provinces in terms of their direst needs has been sacrificed to the security of British rule in India. For to-day the two factors which make the whole system top-heavy and which are to blame for the maladjustment are expenditure on Defence and expenditure on the Services. The significance of this has not escaped the notice of Professor Keith, who writes :

> " Perhaps insufficient attention was paid to the fundamental fact that the demands of defence on revenue really must determine the economic and financial policy of any government in large measure and that to assert that a responsible government was possible when it must devote most of the revenue it raised to purposes over which it had

no control was to treat responsible government in a rather curious manner."

Curiously enough, an answer to this view was given by none other than Gandhiji in an article he wrote in the *Harijan* entitled "The Fundamental Difference" soon after the Congress decision to form Cabinets in July, 1937 :

> "Whereas formerly the Ministers were amenable to the control of the Governors, now they are under the control of the Congress. They are responsible to the Congress. They owe their status to the Congress. The Governors and the Civil Service though irremovable are yet answerable to the Ministers. The Ministers have effective control over them up to a point. That point enables them to consolidate the power of the Congress, i.e., the people. The Ministers have the whip-hand so long as they act within the four corners of the Act, no matter how distasteful their actions may be to the Governors. It will be found upon examination that so long as the people remain non-violent, the Congress Ministers have enough freedom of action for national growth."

Answering the objection that the financial part of the Constitutional scheme makes such a development impossible, Gandhiji wrote :

> "No doubt there is great validity in the argument that the Act has left the Ministers no money to spend for the nation-building departments. But this is largely an illusion. I believe with Sir Daniel Hamilton that labour, and not metal, is real money . . . . If things are done on a co-operative basis, which in other words is modified socialism, money would not be needed, at least not in large quantity."

Leaving the argument there for further experience of the working of the Constitution to decide the issue, it would be more fruitful to consider the possible development of the Constitution in the future. Will this Constitution last ? Will it perish

cataclysmically and be replaced by one devised by the Indian people themselves and built on its ruins or will it in course of time so evolve as to merit the application to India of the Statute of Westminster through a process of " freedom slowly broadening down from precedent to precedent " ?

Such an evolutionary process was described tersely by Sir Samuel Hoare when, in evidence before the Joint Parliamentary Committee, he said :

> " In course of time, other Acts of Parliament will be necessary, more to recognize a state of affairs that is in existence than to make actually new changes."

What is therefore contemplated is a process of development through the establishment of conventions which in course of time would secure statutory sanction.

This ponderous and clumsy means of constitutional progress is rendered necessary because of the absence of any constituent powers given to the Indian legislatures, with the solitary exception provided in Section 206 whereby the Federal Legislature is given the power to enlarge the appellate jurisdiction of the Federal Court. For the rest, the cumbrous procedure is available at least ten years after the passing of the Act of making representations to the British Government suggesting constitutional changes, which could then be made either by Act of Parliament or Orders-in-Council or amendments to the Instrument of Instructions !

The Simon Commission had expressed the desire that the Constitution should contain within itself provision for its own development. The Act has completely ignored that wise suggestion, with the result that no *constitutional* outlet worth the name exists for the tremendous forces that make for the rapid transfer of political power to the Indian people. In such conditions, it is not likely that India's advance to democracy will be along exclusively constitutional channels.

Assuming, however, that a revolutionary challenge to this Constitution does not materialize or succeed and that it is found

possible to advance along the path of transforming the present system in the provinces into real responsible government, accompanied by genuine responsible government at the Centre, what are the steps incidental to such a change ?

The first and biggest single change that would be called for, if genuine responsible government is to be established in the provinces, is that the Governors should act on the advice of their Ministers in those matters regarding which they are to-day entitled under the law to act in their discretion or in the exercise of their individual judgment. This would presuppose the withdrawal of the Governor from his present dominant position in the administration to a purely titular position such as that occupied by the King in England. The Simon Commission had themselves in a rare display of vision envisaged such a development, though not perhaps in such a far-reaching form, when they wrote :

> " Self-government in the provinces can only become a reality when the Governor does not come in like a *deus ex machina* to make the wheels go round."

Such a development, it may be presumed, could be brought about if it was demonstrated not only to the Governors but also to the British Government that the only way to make the wheels of administration revolve smoothly was to accept ministerial advice in all matters. For it must not be overlooked that such an abandonment of his powers by the Governor would require the co-operation of the British Government itself, as became obvious when in 1937 the Congress made the identical suggestion. Sections 54 and 14 of the Act will, among other things, need to be taken into account in such a process. These are the sections of the Act by which the Governor acting in his discretion or in the exercise of his individual judgment is subject to the control and superintendence of the Governor-General in his discretion and the latter in his turn is similarly bound to act according to the directions of the Secretary of State for India. If, therefore, the Governor's special powers are to be allowed to fall into disuetude, he will first have to be freed from the

leading strings of Whitehall and his position will have to become that of the satrap in the Dominions who represents the Crown alone and not the British Government.

The Provincial Legislatures will similarly need to be released from the fetters which restrict their initiative and their freedom of action. This would involve, *inter alia,* the repeal of Chapter III of Part V of the Act in its entirety, which embraces the ' Discrimination ' provisions of the Act. This would indeed be nothing more than a simple act of justice and the undoing of a breach of faith on the part of the British Government. The Gandhi-Irwin Pact of 1931 had allowed only for safeguards which were " demonstrably in the interests of India." Later, the White Paper of 1933 coolly overlooked that assurance and claimed that the safeguards suggested in it were " in the common interests of India and England." In the result, we have the discriminatory clauses which are demonstrably *against* the interests of India !

Along with the release of the legislatures from various restrictive provisions, the establishment of democracy would presuppose the extension of the franchise to every adult man and woman and the abolition of communal electorates, with provision of Proportional Representation to safeguard all minorities, communal or political.

Financial readjustments would, of course, be necessary if the breath of life is to be infused into this Constitution. These would necessitate, *inter alia,* not only a transfer to popular control of Defence and of the Services affecting particularly the powers under Sections 244, 246 and 267 of the Act, but also a drastic reduction in the drain on public funds caused by these top-heavy departments.

Nor would Provincial Autonomy be complete until wide and extensive use were made of Section 290 and provincial boundaries were so revised as to result in linguistic and homogeneous provinces, embracing not only territory at present forming part of the British Indian provinces, but also of the Indian States,

which would in the process undergo dissolution and redistribution among the appropriate linguistic groupings.

We have so far catalogued some of the more vital changes in the Constitution which its transformation into a truly democratic scheme of government would involve. As important structural changes are those, however, of spirit.

It was observed by Walter Bagehot that no new Constitution could be expected to function satisfactorily until those who had lived and functioned under the previous regime had passed away ! The human mind, argued Bagehot, becomes so habituated to the conditions imposed by one system of government that it cannot throw off its ways of thought and action and adapt itself completely to the requirements of the new regime. Already, this process of fitting square pegs into round holes has been proceeding—not entirely without difficulty. Much greater resistance may, however, be expected in future, because hitherto the real substance of power transferred to popular hands is small compared to what yet remains with the British Government and its representatives in this country.

The constitutional development of a country is nothing but the formal representation of changes in the possession of political power by different classes or sections of society. Whether the bounds of the Constitution are to be expanded by pressure from within or whether they will crumble before assault from without will depend on a number of imponderable factors which History alone knows of and will in fullness of time reveal.

Postscriptum

The foregoing was written before the rapid change in the Indian political scene caused by the outbreak of war between Britain and Germany on 3rd September, 1939, and the declaration by the British Government that India was at war with Germany.

The Indian National Congress—in pursuance of its declared policy of resisting the utilization of Indian men, money and resources in Britain's wars and by reason of the failure of the British Government to declare its war aims, to assure India's national independence at the end of the war and to take immediate steps to transfer power at the Centre to popular control —called on Congress Ministries to resign as a first step in non-co-operation with the war.

Commencing with the Madras Cabinet on 27th October, 1939, eight Provincial Governments tendered resignations after resolutions endorsing the Congress attitude had been adopted by their respective Legislative Assemblies.

Madras was the province where the resignation was first accepted. Having invited the leader of the Opposition to form an alternative Cabinet and having failed in that attempt, the Governor of Madras had no choice left but to suspend the working of the Constitution in accordance with Section 93 of the Government of India Act. This he did by Proclamation on 30th October, 1939.

Having stated that the government of the province could not be carried on in accordance with the provisions of the Government of India Act, the Governor's Proclamation proceeded to declare that all his functions would be exercised by him in his discretion and that he had assumed to himself all powers vested in the Provincial Legislature. The Proclamation further suspended the operation of numerous sections of the Act, mostly concerning the working of the provincial executive and legislature, and appointed three members of the Indian Civil Service to act as his Advisers.

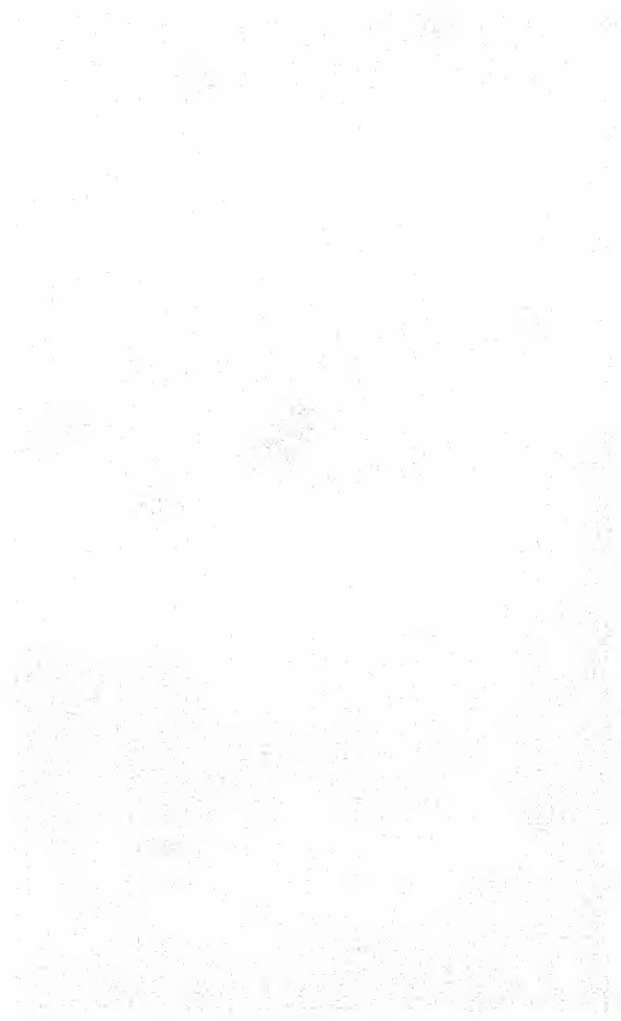
The same procedure was in turn gone through in other provinces, leaving ' Provincial Autonomy ' in its truncated form functioning in the Punjab, Bengal and Sind alone.

M. R. M.

PART TWO

BY

C. Y. CHINTAMANI



CHAPTER X

The Goal of British Policy in India

THE first question that the Government of India Act, 1935, raises is, what, according to it, is the goal of British policy in India. According to Mr. Montagu's Declaration of 1917, which was reproduced as the preamble of the Government of India Act, 1919, it is " responsible government in British India as an integral part of the British Empire." The demand of educated India was for Dominion Status. It was understood that this was implicit in the 1917 Declaration. The understanding was strengthened by the language of King George V's message, referred to earlier, delivered by the Duke of Connaught at the inauguration of the central legislature, as well as by the addresses of His Royal Highness as well as the Viceroy, Lord Chelmsford, on that memorable occasion. But the belief that this was the goal of British policy was rudely shaken by the disagreeable surprise of Sir Malcolm Hailey's speech in the Legislative Assembly early in 1924. Speaking as Home Member and on behalf and with the authority (as it was understood) of the Governor-General (Lord Reading) and the Government of India, Sir Malcolm Hailey drew a subtle distinction between " responsible government for British India " and " Dominion Status for India," and categorically denied that the British had made any promise of the latter. As this produced grave suspicion in the public mind about British intentions and as it was considerably strengthened by the studied avoidance of the phrase Dominion Status by the Simon Commission, Lord Irwin took care, with the authority of His Majesty's Government, specifically to mention in his announcement of the Round Table Conference that His Majesty's Government always understood that the promise of Dominion Status was implicit in the Declaration of 1917. The difference between the Indian National Congress and other public organizations was on the issue of Dominion Status *v.* Independence ; there was no question of

any section of Indian opinion being content with anything less than the former. The Nehru Committee set up by the Congress in 1928 proposed a constitution for India on the basis of Dominion Status and this was accepted by the National Convention which assembled in Calcutta in the December of that year. But the Indian National Congress at its session held at Lahore in the following year declared for *purna swaraj* or complete independence—a phrase which has no meaning if it does not mean that the British connection with India should be severed. Notwithstanding this, the Congress generalissimo, Mahatma Gandhi, declared that he would be content with " the substance of independence." This phrase is, to all intents and purposes, synonymous with Dominion Status. There can be no doubt about this at least after the Statute of Westminster passed in 1931. The statute provides, *inter alia,*

(1) that any alteration in the law touching the Succession to the Throne or the Royal Style and Titles shall hereafter require the assent as well of the Parliaments of all the Dominions as of the Parliament of the United Kingdom ;

(2) that no law hereafter made by the Parliament of the United Kingdom shall extend to any of the said Dominions as part of the law of that Dominion otherwise than at the request and with the consent of that Dominion ;

(3) that the Colonial Laws Validity Act, 1865, shall not apply to any law made after the commencement of this Act by the Parliament of a Dominion ;

(4) that no law and no provision of any law made after the commencement of this Act by the Parliament of a Dominion shall be *void* or inoperative on the ground that it is repugnant to the law of England, or to the provisions of any existing or future Act of Parliament of the United Kingdom or to any order, rule or regulation made under any such Act, and the powers of the Parliament of a Dominion shall include the power to repeal or amend any such Act, order, rule or regulation in so far as the same is part of the law of the Dominion ;

(5) that the Parliament of a Dominion has full power to make laws having extra-territorial operation ;

(6) that no Act of Parliament of the United Kingdom passed after the commencement of this Act shall extend, or be deemed to extend, to a Dominion as part of the law of that Dominion, unless it is expressly declared in that Act that that Dominion has requested, and consented to, the enactment thereof.

These and other sections of the Statute of Westminster can leave no room for doubt that the dominions enjoy the same status as Great Britain in the British Commonwealth. Therefore, Mahatma Gandhi's " substance of independence " is the same thing as the Liberal Federation's Dominion Status. It was the unanimous wish of the representatives of Indian opinion that the Government of India Act, 1935, should explicitly declare that the goal of British policy in India was Dominion Status—of course in terms of the Statute of Westminster. Every endeavour was made in this behalf in India as well as in England. But the British turned a resolutely deaf ear to every such appeal. The Government of India Bill, as it was introduced, had no preamble. But as a result of a debate in the House of Commons, all that His Majesty's Government consented to do was to repeat the preamble of the Act of 1919 as the preamble of the Act of 1935. That preamble includes contentious matter never accepted by nationalist India. The following passages of the preamble bring this out clearly :—

And whereas progress in giving effect to this policy can only be achieved by successive stages, and it is expedient that substantial steps in this direction should now be taken :

And whereas the time and manner of each advance can be determined only by Parliament, upon whom responsibility lies for the welfare and advancement of the Indian peoples :

And whereas the action of Parliament in such matters must be guided by the co-operation received from those

on whom new opportunities of service will be conferred, and by the extent to which it is found that confidence can be reposed in their sense of responsibility.

The objections to these limiting clauses are obvious, and it is not necessary to do more than merely mention some of them. In the first place, it was a desire both of Indian reformers and of Mr. Montagu in 1917-18 that the Government of India Act should contain within itself the means of future development until India attained the full stature of a dominion ; that no outside agitation, with all its attendant drawbacks, should be necessary to bring about needed and desired changes. The experience of the Simon Commission has demonstrated that, due to the qualifications and reservations of the preamble that has been cited, this aim had not been achieved and there was continued necessity of the application by Indian nationalists of the maximum pressure to the reluctant British mind to concede to India anything of substance. Secondly, the prolonged deliberations of the Round Table Conference followed by the communal " award," the White Paper, the Joint Select Committee's Report and the Act of 1935 brought into very unwelcome relief the extreme unwillingness of the British Government and Parliament to part with power and privilege in favour of Indians. Thirdly, this selfish and niggardly attitude of the British has not only kept alive but enormously strengthened in India the extremist demand for complete independence involving the severance of the British connection. While, generally speaking, it is true that confidence is a plant of slow growth, the reverse process has long been at work in the relations between England and India. Educated Indians had started on their mission of India's political emancipation with full faith in the high intent and purpose of Britain. This had to yield place as a result of some years of disappointments to belief and the latter, in its turn, has been followed by increasing doubts and misgivings, until to-day it may be doubted if there is any considerable body of knowing Indians who are disposed to believe that except in compelling circumstances England will part with

the substance of power in favour of India.[1] In converting India from faith to belief, from belief to doubt and from doubt almost to disbelief, British statesmanship has achieved a failure of which it has no reason to be proud. If at some day in the future Macaulay's New Zealander should happen to sit on the ruins of the Thames bridge and contemplate on the British Empire that was ; if a future Gibbon should find material for a new *magnum opus* in the Decline and Fall of the British Empire, the surmise would not be rash that he would hold the present generation of British ' statesmen ' chiefly responsible for that sad consummation. Averring that there was no problem that statesmanship could not solve, Lord Curzon boasted that British statesmanship had never failed in India. Well, here is proof positive of failure, although British modesty might be reluctant to make a confession of it.

1 Asked by King George V when he came to India in 1905-06 as Prince of Wales, Mr. Gokhale, who never erred in feeling the national pulse and never over-stated a case, said : " If a plebiscite had been taken 20 years ago whether the people wanted British rule to continue in India, they would have answered, almost to a man, ' yes, certainly.' To-day large numbers would say they were indifferent." At this day large numbers actually want the British connection to be severed.

CHAPTER XI

Secretary of State's Control

THE earlier Government of India Act endowed the Secretary of State for India with the power of superintendence, direction and control over " all Acts, operations and concerns which relate to the Government or revenues of India, and all grants of salaries, gratuities and allowances and all other payments and charges out of or on the revenues of India." There is no corresponding provision in the new Act of 1935. This must be deemed to be a decided improvement. It has long been the contention of Indian reformers that the powers vested in the Secretary of State rightly belonged to the Government of India. The Secretary of State is a distant authority, in nearly every instance without a knowledge of India, in most cases with no interest in the country, who is a member of the British Cabinet and as such naturally prone to look at Indian problems from the point of view of British interests, subject to the control of the British Parliament and amenable, directly and indirectly, to the influence and pressure of British financial and commercial interests.

The argument on the other side might be briefly stated. The Government of India was not and could not in the circumstances be responsible to the people of India through an elected legislature. But it must be made responsible to some authority if it was not to be an unmitigated despotism. Britain was the trustee for the well-being and advancement of the people of India. The Government of Britain was under the control of the House of Commons. The Secretary of State for India was a member of that Government. Therefore the responsibility of the Government of India to the Secretary of State indirectly made it responsible to the House of Commons and through it, to the people of Britain. Hence the arrangement was not merely defensible but the only possible

one in the circumstances that existed and would continue to exist.

This argument is fallacious. In the first place, history does not record an instance of such altruism in human nature as to make the people of one country disinterested well-wishers of the people of another under its domination. This psychological truth is confirmed by the actual relations of England with India. The government of India by England teems with unnumbered " masterpieces of melancholy meanness " (Henry Fawcett) in the financial relations of the two countries. The whole story of Britain's military policy towards India sickens the heart of every Indian and ought to sicken the heart of every honest Englishman. In the language of Gibbon, Britain for that policy does not meed India's pardon for the past, applause for the present, or confidence for the future. Of Britain's fiscal and monetary policies in relation to India, the less said the better. Without either injustice or exaggeration they can be compendiously described by the single word exploitation. Having, in a fit of generous indiscretion, passed Section 87 of the Charter Act of 1833 and reaffirmed the noble policy through the mouth of Queen Victoria twenty-five years later, Britain has systematically followed, in respect of the appointment of Indians to high and responsible office, a policy of calculated illiberality and race discrimination against the people of India. So much so, that Lord Lytton writing as Viceroy to the Secretary of State said " we have cheated the people of India." While thirty years later, another and a later ex-Viceroy, Lord Lansdowne, speaking as Conservative leader in the House of Lords on the proposal to appoint an Indian as a member of the Governor-General's Executive Council, perpetrated the *reductio ad absurdum* of describing it as the importation of " a foreign element " into the Government of India. Sir Henry Fowler, an illiberal " Liberal " Secretary of State for India, once described in the House of Commons every member of that august body as " a member for India." Rightly was this audacious claim dismissed by Surendranath Banerjea as

" epigrammatic trash " and by Sir Henry Cotton as " the apotheosis of cant." Mr. George Yule as President of the fourth Indian National Congress was far nearer the truth when he said that " the 650 odd members who were to be the palladium of Indians' rights and liberties have thrown ' the great and solemn trust of an inscrutable Providence ' back upon the hands of Providence to be looked after as Providence itself thinks best." No wonder that the most famous speech (made in London) of the first President of the Congress (Mr. W. C. Bonnerjee) was on the issue " Is the Government of India responsible to any one ? " The truth is, as John Stuart Mill wrote, that the government of one people by another has no meaning and no reality except as the governing people treat the governed as " a human cattle farm." India's experience of government by England amply illustrates the force of Lord Acton's observation that " constitutional government is the sole eternal truth in politics, the rare but the only guardian of freedom."

For the reasons stated the avoidance in the Act of 1935 of the clauses of the earlier Government of India Act which virtually constituted the Secretary of State for India as a nineteenth and twentieth century Grand Moghal is greatly to be welcomed as a decided improvement. But unfortunately, this feeling of satisfaction does not survive a perusal of later parts of the Act. It has to be immensely qualified by reason of the provisions in the Act which reserve in the hands of the Governor-General many and fundamental powers which ought legitimately to belong to the Government answerable to the legislature. More will be presently said of these reserve powers. But they have been so discussed and become so well known, if indeed not notorious, that the conclusion of their consideration may be anticipated. In a word, they make such deduction from the powers which ought to belong to every Government, which indeed ought to be an inseparable incident of Government itself, that the feeling of satisfaction expressed above is reduced perilously near the vanishing point. It should be noted that in the exercise of those reserve powers,

the Governor-General is under a statutory obligation to obey the directions of the Secretary of State. In other words, it is the old system over again, of the British people being the ultimate masters of the people of India—just what the people of India have been struggling to get out of. Reform has no meaning if it does not make the people masters in their own household. The Government of India Act, 1935, leaves them very, very far from this consummation devoutly to be wished for.

What the people of India agitated for was a system of government representative of and responsible to a legislature elected on the widest possible franchise; a system of government as nearly as possible like unto the governments of the dominions in fundamental respects. The National Liberal Federation of India recorded more than once "its conviction of the paramount necessity of the early introduction of full responsible government in British India, alike in the provinces and in the central government, only the Foreign, Political and Military Departments being retained for a time under the control of the British Parliament, and of the full recognition of India as a Dominion in all matters of imperial concern and inter-imperial relations."[1] When the Simon Commission was at work, the Federation, on the motion of Sir Tej Bahadur Sapru, passed a resolution[2] "that the system of government to be established in place of the present system should be the same as that which prevails in the self-governing dominions which are equal members of the British Commonwealth of Nations and that this step should be taken immediately. Any further delay and postponement" the resolution declared, "is fraught with danger to the mutual relations of India and England." It declared after the publication of the White Paper,[3] that "a generous and far-reaching measure of real reform on the lines of dominion constitutions which will make India an equal member of the British Commonwealth of Nations, will alone meet India's requirements

1 1924, Lucknow.
2 1928, Allahabad.
3 1933 (April), Calcutta and (December), Madras.

and will satisfy the national self-respect of India." Mr. Asquith described the now-abandoned system of the government of Ireland by England as "irrational and indefensible." The description was and still is and, what is worse, will unfortunately be after all-India federation as adumbrated in the Act of 1935 has been introduced, true of the Government of India. Mr. John Redmond pleaded for "the full rights of national self-government for Ireland." We asked for the same for India though we expressed ourselves, due to difference of circumstances, in slightly different language. We wanted complete responsible government "in the whole sphere of internal civil administration" and conceded, due to reasons for which we are not responsible—reasons which do little credit to England—that, for a definite period to be fixed by statute, military and external affairs might be left under the control of the Governor-General. Even here we were firm that the provision of facilities for the training of Indians for higher military offices should be in the hands of the responsible Government and also, that that Government should have an effective voice in fixing the size of the defence budget. Actually we have been given none of these things. While a United States of India (not only of British India) has long been the cherished ideal of Indian nationalists,[1] and while therefore an all-India federation comprising Indian states and not only British Indian provinces is in principle very welcome, the regret is that we are going to be put off with a limp federation full of undesirable features, ill-balanced as between the states and the provinces, and denied powers which are vital to every Government worthy of the name. It is hoped that in succeeding chapters the correctness of this criticism will be fully established, certainly to the satisfaction of Indian readers, but it is hoped also, so as to carry conviction to the minds of reasonable and fair-minded Englishmen.

1 See the presidential address to the Indian National Congress of 1904.

CHAPTER XII

All-India Federation

THE principal feature of the new constitution is the establishment of " the federation of India " which it contemplates. As stated in the previous chapter, the principle of all-India federation must be accepted by every knowing and thinking Indian. The desirability, possibility and feasibility of such federation has for years been a subject of periodical discussion both among Indians and Englishmen. I do not recollect having read anywhere an opinion adverse to this ideal, right up to the time that it came within the range of practical politics. Every one who seriously considered the problem in all its aspects admitted its desirability, but was obliged to conclude that it was not a practical proposition and was not likely to be for how many years no one could tell. From the time of the discussions which eventuated in the Act of 1919 the ruling princes of India betrayed an anxiety that the central legislature of British India might introduce fiscal and financial measures which involved the interests of Indian states but in the consideration and determination of which the governments of the states would have no voice whatever. On their part British Indian politicians were not slow to appreciate the states' point of view but had perforce to inquire whether the ruling princes would make a *quid pro quo*. A highly competent writer who may, without unfairness to others, be described as the most judicial-minded and most accurate thinker among living Indian public men, discussed the subject nine years ago elaborately and with consummate ability, and reached the following conclusions :—

(1) In the interests of British India the form of government should remain essentially unitary.

(2) On no other basis than that of a decisive majority against all the states could or would British India enter into any federation with the states.

(3) It would be impossible to constitute a single body or house on the two radically distinct principles of representation of states and representation of people.

(4) " The princes' love of punctilios in matters of precedence, their unwillingness to recognise anything like an equality among themselves, and their dislike of decisions by a majority, must all operate to intensify their aversion to any genuine federal constitution. . . ."

(5) The princes may perhaps be able to suggest some form of organic association . . . . " It may be federalism in some new-fangled sense, but the people of India should be slow in making up their minds to embark in a novel craft hitherto untried."

(6) " Our examination of the possible forms of organic association between the princes of India and the people of British India has led us to the conclusion that it is not possible to provide for any workable scheme except upon terms and conditions which are not now likely to find favour with the princes."[1]

In the same year (1928) the committee set up by the Congress to report on the future constitution of India in co-operation with other political organizations known as the Nehru Committee after its chairman, Pandit Motilal Nehru, devoted a most important section of their report[2] to a consideration of the position of the states in the future constitution of India. Their conclusion was adverse to the ideas of the princes and it was challenged by one of the most important of their order.[3] The subsequent publication of the report of the Indian States Committee, commonly known as the Butler Committee, did not exactly bring the viewpoints of the British Government, the rulers of states and the people of British India nearer to one another. It is to be noted in this connection that curiously enough, and very

1 Indian Constitutional Problems by Sir P. S. Sivaswamy Aiyer, 1928, chap. 11 to 14, pp. 199 to 262.

2 Chap. V.

3 His Highness the Maharaja of Bikaner.

regrettably, the people as distinguished from the rulers of the states have not been recognized at all as an entity with a *status quo*. The princes refused to recognize them, the Butler Committee refused to hear them, the British Government refused to give them a place in the Round Table Conference. To say that their point of view is not identical with that of their princes is to state the fact in the mildest language.

The Round Table Conference was convened in order that the three parties concerned[1] might jointly deliberate upon problems of common interest. It was there that first the issue was brought to the fore, first, of a federal *v.* unitary form of government for British India and next, of the feasibility of an all-India federation. And, as has already been stated, an agreeable surprise awaited the assembled members of the Conference in the speech of the Maharaja of Bikaner. There His Highness declared the readiness of the princes to come into such a federation and he was followed by other princes in a similar strain. Much has since happened to disillusion both Their Highnesses and the public men of British India as will presently become clear. The terms on which the states (i.e., the rulers of states) should be asked and are willing to accede to the federation have been the subject of discussion for seven long years and they have not yet come to a conclusion. And it is still uncertain whether any and how many of them will eventually federate, and on what terms exactly. While the people of the states are pronouncedly hostile as they have been accorded no share in the discussions and it is apprehended that their position after federation will scarcely be better than it is to-day in their respective states, the people of British India are full of misgivings that the position accorded to the states will merely act as a drag on the progress of the country as a whole. The provisions of Part II of the Act which deals with federation are utterly unsatisfactory. While all that has come to the public knowledge

1 There are really four parties but the fourth, the people of the states, have throughout been left out as possessing no right to a say in the disposal of their destinies.

of the nature of the confabulations that have been in progress during the last six years unmistakably indicates that the scales have been weighted very heavily against British India. Whether this is so ; how, why and to what extent it is so, and with what probable results, will be considered in the following pages (though by no means either exhaustively or in minute detail). But the point of view of the people of the states may first be considered in brief. The people of the states are very far from being a contented lot. It is true they have one enviable advantage over their countrymen of British India. They live under their own princes to whom they freely give of their devotion and loyalty as these qualities are rooted in the Indian heart. They have Swaraj. Unfortunately, however, the *swa* is not collective. It is personal to the ruler. The people enjoy neither representative nor responsible government. There are, it is true, some states which have introduced a semblance of representative government. It is more developed in some, less in some other states. In the vast majority it does not exist at all, there is not even a pretence of it. No political rights are accorded to them. [It will be understood that the criticisms are generic as there fortunately are a few notable exceptions.] Freedom of speech, liberty of the Press, the right of association, judicial trial before punishment, and an independent judiciary are non-existent in a very large majority of states. In the coming federation the representatives of the states will be the nominees of the ruling princes and not the elect of the people. It is possible, it is hoped that at least the more progressive of the princes who have already recognized the principle of representative government will decide to allow their representatives in the federal legislature to be returned by some form of election. This is entirely dependent upon their goodwill ; it has not been conceded as a right. There is no such thing in the Act as the rights of federal citizenship. Paradoxical as it may sound, and highly unsatisfactory as the position in British India is, it can be said without fear of contradiction that the latter, who do not live under a national government, are politically much better off than their

countrymen of the states living under their own rulers. Incidentally it may be remarked that one of the most powerful causes that have operated against more rapid and more substantial constitutional developments in British India is the continued autocracy of the rulers of Indian states and the backward condition in which they have left their people. In Sir Sivaswamy Aiyer's language of moderation, " many of the rulers have not yet begun to realize that the princes exist for the people and not the people for the princes." He enumerates " the essentials of a progressive and civilized administration " and points out that the majority of states do not conform to these " essentials." One point that can be urged in favour of *any* federation between the states and the provinces of British India, howsoever unsatisfactory it may be, is that the states will be bound to feel the reflex effect of the comparatively progressive system of government and administration that exists in the provinces and the result will be all to their advantage. It is argued, certainly with reason, that even the nominated representatives of the states will not fail to revise and liberalise their notions of government by association with the elected members of the federal legislature and that therefore the serious drawbacks of the federal constitution embodied in the Government of India Act are outweighed by this substantial gain. This may indeed happen. Every well-wisher of the country must strongly hope that it will happen. But hope is not fact. The fact is the Act. And it brings to the people of the states still less satisfaction than to the people of British India.

CHAPTER XIII

"The Federation of India"

THE Government of India Act provides that, on the satisfaction of certain conditions His Majesty the King may by Proclamation, declare the establishment of "the Federation of India" comprising the governors' provinces and "the Indian states which have acceded or may thereafter accede to the Federation" and including chief commissioners' provinces. The conditions are that states "the rulers whereof will . . . . be entitled to choose not less than 52 members of the Council of State, and the aggregate population whereof . . . . amounts to at least one-half of the total population of the states" have acceded to the Federation. It will be noticed that it is explicitly stated that it is the rulers who will be entitled to make the choice of members. A ruler wishing to accede to the Federation will first have to execute an Instrument of Accession which will be binding on "himself, his heirs and successors."

> An Instrument of Accession shall specify the matters which the rulers accept as matters with respect to which the federal legislature may make laws for his state, and the limitations, if any, to which the power of the federal legislature to make laws for his state and the exercise of the executive authority of the Federation in his state, are respectively to be subject.

By a supplementary Instrument executed by a ruler and accepted by His Majesty, the functions exercisable by His Majesty or any federal authority in relation to his state may be extended. His Majesty shall not be bound to accept any Instrument or supplementary Instrument of Accession, nor will he be empowered to accept any such Instrument which may not be consistent with the scheme of federation embodied in the Act. Only those provisions of the Act which are enumerated in the second schedule may be amended "by or by the authority of

Parliament without effecting the Accession of the State," " but no such amendment shall, unless it is accepted by the Ruler in a supplementary Instrument, be construed as extending the functions " which are exercisable by His Majesty or any federal authority in relation to the state. States not acceding to the Federation before its establishment may apply for such accession. No change can be made in the constitution of either house of the federal legislature except by consent of the rulers of the federated states. A study of the second schedule demonstrates, negatively that a federated state may, for as long as it may choose and for all time, if it will, effectually block any and every amendment of the constitution intended to relieve it of even its most patent defects, and affirmatively, that the range within which any valid amendments may at all be made without the satisfaction of this almost impossible condition is very narrow. The Act is so full of incongruities and absurdities that every constitutionally-minded person should wish that the earliest possible opportunity should be taken to remove at least the more flagrant of them. There are many public men in British India who, while not at all enamoured of the scheme of federation embodied in the Act, are still desirous of making the Federation an accomplished fact as the opportunity once lost of bringing the states and the provinces together, may not occur for a long time.

While dissatisfaction with the scheme is common ground to all political parties in British India, there is this difference between the Congress (and possibly the Muslim League) on the one hand and the Liberal and other parties on the other, that now that the provincial part of the constitution has already been introduced, the central Government should not be left as it is but should be developed into a federal government as soon as possible. This desire of the latter is rather checked by the inflexible provisions of the Act which confer upon the federating states—not merely all of them combined or even a majority of them but every single one of them —something like a permanent and absolute veto on any developments to which all or some or any of the rulers may fancy

an objection, serious or frivolous, substantial or nominal. This, in a way, stereotypes all that we of British India regard as being bad in the proposed federal structure. Situations not foreseeable may conceivably arise which will compel recalcitrant rulers to agree to change as the smaller of two evils. But it is no prudence for one to bank upon them. It follows that a whirlwind agitation or a succession of such agitations will have to be undertaken by the public men of British India, with all the attendant risks and evils, as the price of essential revision of the federal constitution. But what is the alternative ? It is a continuation of the existing system of central government to which after sixteen years of saddening experience no one is so poor as to do reverence. Will it be said that, by the power of public opinion with its growing strength, even imperialist England may be forced to do that which at present she betrays no disposition to do ? This argument is diminished in strength by the constitutional veto that has been given to the federating rulers. Therefore the choice at the moment is limited to either the introduction of the proposed federal constitution with all its drawbacks or a continuation of the present system at the centre which, as I have said, no one wishes for. Here is a perplexing, almost a baffling, problem the solution of which calls for higher statesmanship than perhaps any situation that has so far arisen. But there is one more question. On the assumption that the political leaders of India are capable of such statesmanship, what chance have they ? There is no option to the provinces to join or not to join the Federation. British Indian opinion is not being, and there is no proposal that it should be, consulted. The Government of India Act, 1935, proceeds upon the footing that the provinces must, shall and will be federating units. The position therefore is that provided the requisite number of ruling princes and the British Government are able to come to terms and Instruments of Accession are executed by them, the Federation of India will become a *fait accompli* ; only the British Parliament having the power to block progress at that stage. This there is no likelihood of its doing as His Majesty's Government have, and will always have, a majority in the House of

Commons, as the *sine qua non* of their very existence. Due to the nature of the federal structure it will not be an unqualified blessing if the princes do come in. But neither will it be a matter to be thankful for if they decide to stand out. A great public disservice of incalculable consequences has been rendered by Sir Samuel Hoare and his colleagues by deciding upon such a scheme of federation in cynical disregard equally of request, persuasion, advice and agitation ; of reason, sense and justice. The people of British India have verily caught a Tartar. To catch a Tartar is like unto catching a chill. We do not catch either ; he or it catches us, and we cannot release ourselves from his or its cruel grip. This is the unenviable position that has been created by the federal part of the Government of India Act, 1935. It is intolerable. But it is the fate of man that he has to suffer much that is intolerable. And he suffers it ; the more philosophical minority in a spirit of resignation, the uninstructed majority with wails, hisses and groans. This is our position now, as it appears to me at least.

CHAPTER XIV

The Federal Legislature

THE Federal Legislature will very properly be bicameral ; as the present central legislature is. The first chamber will be the Federal Assembly and the second, the Council of State as at present. The Council of State will consist of 150[1] representatives of British India while from the states a number that may vary between 52 and 104[1]. That is to say, the aggregate number of representatives of the states when all of them have acceded to the Federation, will be 104, while it cannot be established unless states entitled to send 52 members accede to it. The strength of the Federal Assembly will be 250 members representative of the provinces and 125 from the states. In the two houses combined, British India will be represented by 375 members while the nominees of rulers of states can be 229[1] and may be somewhat less until all the states shall have acceded. In all known federations the lower houses or popular chambers represent the people and the upper houses or revising chambers, represent the federating units. But our federal constitution is extraordinary and unprecedented. The so-called representatives of the states not only in the Council of State but in the Federal Assembly, will be merely nominees of their rulers. The people of the states are dismissed as mere chattel. The representatives of the British Indian provinces in the Federal Assembly will be returned by indirect election by the representative provincial assemblies with the added drawback that members thereof belonging to different communities will vote separately. The vicious policy of election by separate communal and sectional electorates is carried so far! But, curiously enough, the British Indian members of the Council of State will be directly elected. Of the representatives, of people, of provinces and of ruling princes in the two houses of the federal legislature, 375 will represent British India and

1 Six members will be nominated by the Governor-General. They belong either to the states or the provinces.

254 the rulers of states ; that is, British India will have 58 per cent. as against 42 per cent. conceded to the rulers of states. The disproportion is obvious. It is possible, one may hope that it will happen at least in some cases, that the nominees of the ruling princes will include reformers and nationalists. But living as they do in autocratic states where the will of their rulers is the law, he must be a rare man entitled to all honour who will dare at any time to give effect to his personal convictions when they are not identical with the orders of his master. At least some of the rulers in their turn are undoubtedly men of ability and have a progressive outlook, but how many of them are there who will have the courage to face the possible consequences of their disregard of the wishes of the Political Department to whose chariot-wheels they are tied ? Let it not be forgotten that the British Government is the paramount power, and that, according to the Butler Committee, the only definition that can be given of paramountcy is, well, that it is paramount.

A little more may be said of the method of election to and the composition of the two houses of Federal Legislature. Why on earth did the British Government and Parliament prefer the indirect to the direct method of election to the Federal Assembly ? It is true that the Simon Commission recommended it. But then it made other recommendations which were not accepted. If the report of that Commission was to be the guide-book of the British Government, it was a waste of time and money for them to hold the Round Table Conference ; except for the bringing in of the states through their rulers. No progressive member of the British Indian delegation to the Round Table Conference would have been found in his place if it had been announced that the Simon Commission Report would be the basis of discussion. It was because of the intense dissatisfaction of the people of India with the Simon Commission that Lord Irwin proposed, and His Majesty's Government consented, to the convening of the Round Table Conference. At the Conference itself no support worth mentioning was forthcoming to the suggestion of indirect election to the Federal Assembly. The

one audible voice in support of it was that of Sir Samuel Hoare himself. The Indian Franchise Committee, presided over by a statesman of the fine culture, the knowledge of constitutions and the balanced judgment of the Marquess of Lothian, recommended direct election. Not even Sir Samuel Hoare's White Paper rejected it. The substitution of indirect for direct election was the work of the Joint Select Committee. The authors of the proposal of indirect election might think to find a justification for it in the results of the elections to the provincial assemblies. But since the latter have been constituted the electorates for the Federal Assembly, much good will their indirect election do them ! It is not quite easy to remark in restrained language, on the counterfeit that has been substituted for genuine election to what will be far and away the most important legislative body in the whole country. The incompetence of an illiterate (what a tribute to a century and three-quarters of British rule !) and untried electorate cannot be an adequate reason for the rejection of direct election, for then the same reason should have held good in the case of provincial assemblies.

And then, why has direct election been preferred for the Council of State ? It may be said (1) that the latter is not made up of unwieldy numbers and (2) that a more select and therefore more competent (or less incompetent) class of persons constitutes that electorate. The former objection has been answered in the most practical manner by the signal proof which every provincial government has given of its ability to manage large electorates. When the Southborough Franchise Committee made its recommendations in 1918, the same doubt was expressed about the administrative impracticability of the management of the proposed electorate. But the provincial governments proved this fear to be unfounded. When the Lothian Committee's Report was published, again the same kind of doubt was expressed by the same class of critics. Once again provincial governments have splendidly vindicated their administrative capacity by managing these much larger electorates, on the whole so very well.

The second objection relates to the incompetence of the electorate. What is the test of competence ? If it be the knowledge of political and economic questions possessed by the average elector, there is no single electorate in the world which can pass the examination. This test cannot be the foundation of democratic government. What the average elector is expected to understand is the broad issues which divide one set of candidates from another and to make up his mind which he prefers. Many and weighty citations can be made from British political writers of the amazing incompetence and perversity and lack of honesty which the electorate of Britain betrayed on a number of occasions. But the answer of authority has been continuously to lower and widen the franchise until to-day it is adult franchise.

Since when has the British Government in relation to India made ability a test of suitability either for office or for membership of the legislature ? How did the calibre of the men appointed to the old Statutory Civil Service, and afterwards to the provincial, compare with that of persons appointed as a result of competitive examination ? At this day how does the average nominated I.C.S. or I.M.S. officer compare with his confrères who successfully stood the test of a stiff examination ? What was the level of the man whom governments in India delighted to prefer to fill—no, to occupy—the nominated seats in the legislature ? I do not think it an exaggeration to describe it as laughable. In the more important appointments to executive councils and to the offices of ministers, how much anxiety have governors betrayed to make ability a test of fitness ? The British Government's record in British India is the final answer to the plea of incompetence of the electorate. Honourable exceptions—the existence of which every fair-minded person must and I do thankfully acknowledge—allowed for, this record has compelled many acute observers to remark that perhaps the ruling authority has ordinarily little use for men of ability and character among the people of a subject country. Sir John Gorst's famous saying about the habit of

governments to cut down tall poppies may be recalled in this connection.

As regards the political complexion of the candidates apt to be preferred by a large electorate, the British Government itself, if it has eyes to see and minds to think, should have been clear that no more could it, by devices that do little credit either to its heart or its head, stem the tide of rising popular aspirations than old Canute could hold back the waves of the sea or Mrs. Partington could by the raising of her broomstick, prevent the clouds from lowering. Of too, even Macaulay's schoolboy should have thought that the British Government had had as much demonstration as any sensible authority would have cared for. It should be supposed that history and politics are subjects in which politicians and administrators received instruction. If this is the result of such instruction, surely it is wasted upon them. It is a commonplace of politics that the only sensible and effective answer to popular aspirations is to concede them in good time, of course within the limits of reason. When authority's answer to legitimate demands takes the too familiar and time-dishonoured form of repression, the answer of the populace to the demands are put up ; while judicious concession brings the people back to a recognition of that which is practical and reconciles them to authority. The alternative is the vicious circle of agitation, met by more severe repression, until in the end authority is swept away and things happen as they have happened in Russia. Of the many unwise things done by the Joint Select Committee, none perhaps is more gratuitous than its substitution of indirect for direct election, to the Federal Assembly and none has been more resented. At the moment of writing it is so uncertain what may happen in the provinces under Congress governments when elections will have to be held by the provincial legislatures for the Federal Assembly.

Did the British Government and Parliament think to have peace in the Federal Assembly by banning from it extreme politicians—call them demagogues if you will—who are such a

source of worry to them in the present Assembly ? Firstly, this was not a legitimate desire. Secondly, it was not a desire capable of realization. Thirdly, it will bring in its train a penalty more severe than the trouble that is avoided on the floor of the legislature. The desire is not legitimate because it should be the object of every honest and sensible government to have an authoritative expression inside the legislature of every shade and variety of opinion and of *all* sections of the people and not only those opinions which are either agreeable or at least not irritating. This is the *raison d'être* of proportional representation. The extreme opinions themselves do less harm when uttered inside the legislatures than when they are addressed to mobs in squares and parks. They can be immediately met by the opposite opinions and the cumulative effect of a series of debates is nothing but wholesome on both sides. It is no use having a legislature if it is to be packed by men who do not voice the real sentiments of the people. As long ago as 1892, when the noble chairman of the Joint Select Committee was a child of four years, both Lord Salisbury, the greatest of Conservative Prime Ministers, and Gladstone, the greatest British statesman of the nineteenth century, expressed a wish that genuine representation should be accorded to all sections of the people. The great Liberal patriarch said in the House of Commons :

> I believe I am justified in looking forward not merely to a nominal but to a real living representation of the people.

Lord Salisbury said in the House of Lords :

> If we are to do it, and if it has to be done, of course accepting that it must be done, let us do it systematically, taking care that the machinery provided shall effect the purpose of giving representation, not to accidentally constituted bodies, not to small sections of people here and there, but to the living strength and the vital forces of the whole community of India.

This was not done then. It was not until 1920 that a beginning was made in the desired direction. But under the Act of 1935, in the face not only of Indian public opinion expressed unmistakably and repeatedly, but of the recommendation of Lord Lothian's Committee and a considerable body of opinion in England itself, a step backwards has been taken which might give a rude shock to the great Liberal and Conservative statesmen who spoke in 1892. What can it be but a pretence that indirect election can secure either Gladstone's "real living representation of the people" or the representation of Lord Salisbury's "living strength and vital forces of the whole community of India"? Very moderate public men of India have been heard saying that, to whatever else they could reconcile themselves in the grossly defective constitution which has been imposed upon this country, they could not bear the very thought of this wanton abolition of direct election to the central legislature. Progress may not be rapid, it may be utterly inadequate, but provided it is advance on the straight high road, even ardent spirits may check their impatience and wait for a better day. The position is wholly different when it is actual motion backwards in the guise of advance.

If indirect election to the popular house of the Federal Legislature is both unprecedented and objectionable, what is to be said of direct election to the less important upper chamber? In all federal constitutions the reverse is the practice. And for the good and sufficient reason that while the former is constituted to represent the people, the function of the latter is to represent the point of view of the federating units. The system of election devised for the Federal Assembly should have been adopted for the Council of State, *minus* the abomination of the separate communal device. Institutional and functional representation too would not be out of place in the case of the upper chamber. At least, the compromise might have been considered of wholly territorial election for one of the two houses and of sectional representation for the other. But no, the genius of the deciding authority thought to present India with a scheme which

is a combination of the drawbacks of different systems. As a punishment for India's impudence in asking for responsible government instead of being content to sing Hallelujahs and *Te Deums* to the British bureaucracy and plutocracy ? Those Indians who, while not oblivious of the evils of alien rule, have yet a lively and grateful sense of the immense good that the British connection has wrought—and still they are in good though in diminishing numbers—ask themselves what has come over England that its ' statesmen ' should so often prefer the wrong to the right course of action and almost go out of the way to create situations which do nobody any good. The series of blunders that Britain has perpetrated and continues to commit in India, *plus* its vacillating ' policy ' without a principle in the politics of Europe and the world which has visibly reduced its prestige as well as its importance in the comity of nations, compels the question " Stands England where it did ? " in the place of the attitude expressed in the saying " England, with all thy faults I love thee still."

The nature of the Federation with the states, the method of election to the federal legislature, its composition, the severe limits set to the powers it can exercise, the restrictions of the sphere and of the powers, even within the allotted sphere, of the coming federal government ; the enormous, excessive and undesirable powers reserved in the Governor-General—these are features of the new constitution which led not only the Congress but the Liberal Federation to describe it as unacceptable. Unacceptable it continues to be. But at the present stage to repeat that it is unacceptable, while it is to utter the bare truth, is to indulge in a mere academic expression of opinion. The contention that this is not so at least in the region of the central government has already been answered, or at least an attempt has been made to answer it. Really no choice is left to the people of British India. They may grin but they have to bear it and, acting like practical men (and politics is nothing if it is not a practical art), make the best they can of a bad job ; seeking comfort from the thought (it is also a fact) that constitutions theoretically perfect

have disappointed expectations while those which are illogical and even irrational, have been known to yield unexpectedly satisfactory results. All said and done, the human element is the predominant factor in the working of a constitution. Mr. Montagu and Lord Chelmsford wrote in defence of their highly illogical and highly imperfect dyarchical constitution, that it might still be worked with success " if reasonable men act in a reasonable spirit." The last eight months have demonstrated, not for the first time, the spirit of adaptability and the genius for government of representatives of the British race. The indefensible powers reserved in governors of provinces have so lain in the background even in provinces under Congress ministries that the most vehement critics of the provincial constitution have been obliged to ask themselves whether after all they might not have made too much of the objectionable features of the Act. Candour compels a fair-minded man to acknowledge the force of the age-old distinction between the word and the thing. What therefore the people of India have now to do is to concentrate on attempts to return the best available men (and women) to the two houses of the federal legislature and to act so as (1) to obtain for the country the best possible results from even this constitution, and (2) to induce the conviction in the Governor-General, that his special powers of responsibility need not be invoked and (3) in our ruling princes as well as the British Parliament, that they may safely agree to a liberal revision of the constitution on lines reasonable in themselves, suggested by the experience gained by other countries in the working of their respective constitutions, and acceptable to the people who have to work it—the people not less of the states than of British India.

No consideration of the constitution of the federal legislature can be complete which does not include at least a reference to the division of the electorate into so many water-tight compartments. Separate caste representation (the provisions for the representation of the scheduled castes amount to this), separate functional representation and separate sex representation—where in the wide world where there is

representative and democratic, constitutional and responsible government is one confronted by this curious spectacle. The answer of authority to years of agitation against such a travesty of popular representation has been not only to perpetuate it but to extend its scope. Even where no demand has been made for it, it has been thrust upon those who did not want it. The most gratifying feature of the whole of the discussions that preceded the passing of the Act was the virtual unanimity and the unmistakable earnestness of the women of India—all honour to them—in objecting to the election of their representatives or to the quantum of their representation being divided into communal compartments. Most certainly they did not want to be drawn into the vortex of communal strife. But their voice was not heeded ; and needs must they act as Hindu women and Muslim women, etc., and not as the daughters of a common Mother who should devote themselves to her service as sisters and with sisterly feelings—to oblige the British Government ! It is easy to say, it has been repeatedly said by apologists of the communal ' award ' that the people of India must blame their own politicians for the failure to reach an agreement and not fix a vicarious responsibility upon the British Government. While of course I give due weight to this argument and deplore as much as any other Indian the failure of Hindus (including the depressed classes), Muslims and Sikhs to agree among themselves, I have never been able to join in this condemnation of ourselves. It is not practicable to set forth the whole case as it presents itself to me within the limits set for this thesis. Briefly put, the answer to the argument with which I do not agree is that conditions were produced by acts of the British Government in which there was almost no possibility of Hindus and Muslims reaching an agreed settlement[1] but assume that the opposite view is correct : What defence can be made of the extension of the system of communal representation through separate electorates to those who not only did not wish for it but continuously protested against it ? Should the

1 For a full statement of my view of the position the reader is referred to my address to the second All-India Anti-Communal Award Conference held in Delhi in February, 1935.

endeavour of statesmanship have been to narrow the limits of such a vicious system and to facilitate its early replacement by wholly territorial representation at an early date, or to extend and intensify its evils and make it increasingly difficult for its abolition ? To put the question is to answer it. As a matter of fact, Mr. Ramsay MacDonald himself answered it more than once in his individual capacity : which supports the view I have always urged, that the communal ' award ' was in reality the decision of the Government and did not embody the Prime Minister's personal opinion.

Next, what about functional representation ? The more one studies and reflects upon the provisions of the Act relating to electorates and representation, the less easy does it become for one to be satisfied of the *bona fides* of the British in this regard. Nor can one at all feel that there has been anything like fairness or impartiality in the quantum of representation accorded to the different communities and interests. How can anyone with a sense of justice approve of the disproportionate representation accorded to Europeans in Bengal, or to the utterly inadequate representation given to the Hindus of the Punjab and of Bengal, or to the number of seats reserved for the scheduled castes in Bengal, the United Provinces and some other provinces ? It must be stated in fairness that the responsibility for the last rests with special weight upon the authors of the so-called Poona Pact and much less upon the authors of the communal ' award.'

The conclusion of this consideration of the method, the distribution and the quantum of representation in the federal legislature is that it is not marked by wisdom, or by a regard primarily for the interests of India as a whole, or by impartiality as between one community and another or one interest and another.

CHAPTER XV

Legislative Powers of Governor-General

CHAPTER IV, Part II of the Act is one of the most unwelcome in the whole legislation. It relates to " legislative powers of Governor-General." This immediately suggests the question whether the Governor-General should possess any legislative powers and why. Certain subjects being reserved under his control, the answer may be given that he must possess powers essential for the discharge of his responsibilities. What are these subjects ? They are (1) Defence, (2) External Affairs, and (3) the Ecclesiastical Department. It is improbable in the last degree that the Governor-General will need special legislation in his administration of these three reserved subjects.

If it be said that legislation may be needed to provide for facilities for the training of Indians for careers in the army, the navy and the air force and for the speeding up of the nationalization of all arms of defence, or for the regulation of expenditure under this head, the answer is (1) that these matters are ordinarily not subjects of legislation and (2) that the Governor-General acting as the agent of His Majesty's Government in England, is not in the least likely to be so concerned for rapid progress in the direction desired by Indians that he will utilize his legislative powers for this behoof. It has always been Indians who have been eager for the rapid preparation of their countrymen to perform their duty and exercise their right of defending their own country and it is the British who have uniformly stood in the way. As has been repeatedly said, there is no part or aspect of British policy towards India so wholly open to objection and so unmistakably indicative of their distrust of Indians and of the determination to prolong for an indefinite period their control of India's destinies as the military policy that has been pertinaciously followed ever since the British connection with India began. If, as I said elsewhere, British

military policy is the touch-stone of the sincerity of British professions, Britain has signally failed to give proof of any sincerity. It was not until 1917 that the bar sinister of race against Indians was formally removed and they were held eligible for the King's Commissions in the army. This was eighty-four years after the Charter Act of 1833 and fifty-nine years after the Royal Proclamation of 1858. And during the twenty years that have elapsed since the theoretical removal of the disability, advance has been made towards Indianization at a pace compared with which the snail or the tortoise may be likened to a mail train if not to a flying machine. And to this day the more candid if less discreet of the exponents of British policy—generally speaking, these are soldiers and not politicians —continue to indulge in periodical utterances to warn Indians against the expectation of anything like rapid or substantial, much less complete, Indianization. Yet, for a wonder, it is British politicians, British administrators and British soldiers who are never tired of essaying to teach ignorant Indians the elementary lesson that there can be no such thing as self-government without the people who seek to govern themselves being able and ready to defend their country. With a smug self-satisfaction which would be amusing if it was not offensive, they tell us with a sneer that for as long as we rely upon British bayonets to keep out an invader or keep the peace in the country, there is no meaning and no sense in our talking of self-government. This is the addition of insult to injury. As if we declined their generous offer to train us in the art of defence and petitioned them to come and remain here with their bayonets to save us from ourselves ! They deliberately pursue a systematic and persistent policy of emasculation of the people and then turn round to tell them that, as they cannot defend themselves, they should not aspire to rule themselves. They keep down the people in a state of illiteracy and utilize this, which is the product of their policy, to tell us that first there must be education and then only can self-government follow. Their policy in the economic field is of a piece with this. If the British were serious in their avowals of a sincere intention to

lead us onwards and upwards to self-government, they would, while retaining in their hands for a reasonable period the control of the organization for the defence of the country (a necessary though unwelcome consequence of their deliberate policy); place in the hands of the federal executive and the federal legislature the power to take steps requisite to the training of Indians for the higher positions in the defence services, to do away with the distinction between martial and non-martial races, to reduce the British garrison, and to determine the size of the defence budget with exclusive reference to the requirements of India. They have done none of these things hitherto and, if the provisions of the Act of 1935 have any meaning, do not propose in the near future to do any of them. In the circumstances, no Indian finds it possible to enthuse over the idea of legislative powers being given to the Governor-General for purposes of securing the adequate defence of the country—if this be one of the purposes thereof.

Next, it is not easy to think of the possibility of legislative powers being needed to enable the Governor-General to discharge his functions in regard to external affairs.

Thirdly, the very existence of the Ecclesiastical Department is a source of genuine grievance to the Indian, both as citizen and as taxpayer. In the first place there ought to be no such thing as an established church. In the second place, India is not a Christian country. Thirdly, the Government does not spend a farthing upon a Hindu temple or a Muslim mosque or a Sikh gurdwara or a Parsi place of worship. Just as the non-Christians make their own arrangements for the satisfaction of their spiritual needs, so ought Christians to do whether they are in the service of the Government or reside here as private citizens. In anticipation of the improbability of an Indian government maintaining, or an Indian legislature sanctioning expenditure on a Christian ecclesiastical establishment, it has been made a reserved department under the Governor-General, so that it may be untouchable by any Indian authority. One more sample, if it were needed, of British justice and British

altruism. But even here, it is inconceivable that legislative powers will be required by the Governor-General.

The conclusion follows, and it is supported by the contents of Chapter IV and other parts of the Act, that the legislative powers of the Governor-General are intended for use by him in relation to subjects, not reserved under his control but transferred to the federal government, albeit with very serious limitations. These will be considered in the next chapter.

CHAPTER XVI

Restriction of Powers of Federal Government and Legislature

THE reservation of certain subjects for administration by the Governor-General with accountability to the Secretary of State, powers vested in him in respect of chief commissioners' provinces, tribal areas and backward areas, and his numerous special powers and special responsibilities in the exercise or the discharge of which he is instructed to act in his discretion or in his individual judgment—these all are deductions from the powers of the federal government and federal legislature. The deductions are both serious and numerous. Of reserved subjects more need not be said, here and now. In the administration of chief commissioners' provinces, the Governor-General is to act, " to such extent as he thinks fit, through a chief commissioner to be appointed by him in his discretion." Why the appointment of chief commissioners and control over their administration should not be vested in the federal government has not been stated and is not understood. A possible exception may only have been made in the case of British Baluchistan.

In the sphere of the federal government and legislature the Governor-General is endowed with vast powers—powers legislative, powers financial, powers administrative. He is to act in his discretion in giving his previous sanction to or withholding it from, bills or amendments repugnant to any provisions of any Act of Parliament extending to British India, or of any Act or ordinance of the Governor-General, or to any matter in respect of which the Governor-General is required to act in his discretion, and those which affect the procedure in criminal trials in which European British subjects are concerned. " Unless the Governor of the province in his discretion thinks fit to give his sanction " to or withhold

it from any bill repugnant to any Governor's Act or Governor's ordinance and the repeal or amendment of any Act relating to any police forces. The Governor-General as well as the governors are empowered to allow or to prohibit the introduction in their respective legislatures of measures prescribing professional and technical qualifications "requisite for any purpose in British India." Indeed they are required not to give sanction unless they are satisfied that the proposed legislation imposes no new disability upon any class of persons. Even after a bill introduced after previous sanction has been passed into law, the Governor-General and governors are empowered to disallow any regulations, rules, by-laws and orders made under such a law. In doing so, they shall exercise their individual judgment. Special and very stringent provisions are inserted in the Act to ensure for non-Indian medical practitioners privileges which the Federal or a provincial Government may deem fit to withdraw on the ground of the denial of similar privileges to Indians in the countries to which those practitioners belong, and the aggrieved practitioners are entitled to seek the intervention of the Privy Council to stop the action of any Government in India; while the officers of the I.M.S. and the R.A.M.C. shall, *ipso facto*, be entitled to be registered in British India as qualified to practise their trade. The Governor-General may direct the Governor of any province to discharge as his agent such functions in, and in relation to, tribal areas as may be specified in the direction. In the discharge of any such functions, the Governor shall act in his discretion. Whenever there may be any allegation of interference with water-supplies, the Governor-General can step in and exercise his functions in his discretion. And all civil courts are closed against any person who may have a grievance in this regard against the Governor-General, or the Government of a province, or the ruler of a state. In making rules for the proper custody of public moneys, the Governor-General as well as governors shall exercise their individual judgment. In the appointment and removal from office of substantive as well as temporary governors and deputy

governors of the Reserve Bank of India as well as in the supersession of the Central Board of the Bank and the liquidation of the Bank, the Governor-General is to act in his discretion, while in nominating and removing directors of the Bank, he is to exercise his individual judgment. (What a fine distinction !) *The Federal Government may not, without the previous sanction of the Governor-General acting in his discretion, introduce a bill or amendment which affects the coinage or currency of the Federation* or the constitution or functions of the Reserve Bank. If and when there may be a dispute between the Federal Government and a provincial government with regard to the raising of loans, the decision of the Governor-General in his discretion shall be final.

When we come to the proposed Federal Railway Authority we are confronted by one of the most disagreeable parts of the Act. The provisions relating to it are inspired by the greatest distrust of the capacity as well as the character of the Indian politicians and administrators who will compose the executive as well as the legislative branches of the federal government, and it is difficult for a self-respecting Indian not to smart under the insult. This will become clear in the brief observations that follow.

Not less than three-sevenths of the members of the Federal Railway Authority, including its president, shall be appointed by the Governor-General in his discretion. The eighth schedule to the Act contains provisions relating to the Federal Railway Authority. It is provided in Part VIII of the Act

> that, except with the previous sanction of the Governor-General in his discretion, there shall not be introduced into, or moved in, either chamber of the Federal Legislature any bill, or any amendment, for supplementing or amending the provisions of the said schedule.

It is laid down that, in the discharge of its functions, the Federal Railway Authority " shall be guided by such instructions on questions of policy as may be given to them by the

Federal Government." But if any dispute arises between the two " as to whether a question is, or is not, a question of policy, the decision of the Governor-General in his discretion shall be final." More. But " nothing in this sub-section shall be construed as limiting the powers of the Governor-General under the next succeeding sub-section." This is notable even in an Act which contains so very much that is notable, and may be quoted in full :

> 183.—(4) The provisions of this Act relating to the special responsibilities of the Governor-General and to his duty as regards certain matters to exercise his functions in his discretion, or to exercise his individual judgment, shall apply as regards matters entrusted to the Authority as if the executive authority of the federation in regard to those matters were vested in him, and as if the functions of the Authority as regards those matters were the functions of ministers, and the Governor-General may issue to the Authority such directions as he may deem necessary as regards any matter which appears to him to involve any of his special responsibilities, or as regards which he, by or under this Act, is required to act in his discretion, or to exercise his individual judgment, and the Authority shall give effect to any directions so issued to them.

This power-absorbing sub-section makes further comment superfluous. It is typical of the mentality of the authors of the Act. The Federal Government and the Federal Legislature are distrusted. They may be incapable, or they may be irresponsible, or they may be actuated by improper motives in relation to Britain and the British, British interests and British authority. They are deserving of no confidence. For the satisfaction of clamorous political agitation, the country may be endowed with a new constitution and vast powers of self-government may seemingly be given to the future Indian government, legislature and electorate, but the key to all power must be reserved in British hands. The new Indian authorities *shall* not do anything that may appear to

them to be justified or necessary in respect of officers of all-India services who are mainly British, or of British business with India or of the railways for which the Indian taxpayer pays, while for them to think of even looking at the Defence organization will be to cast longing eyes on that which is forbidden. I am not a Congressman or a wrecker but am free to confess that these provisions of the Act move me to indignation. The parts of the Act which deal with *commercial discrimination* and the Federal Railway Authority and at least equally, those that relate to the all-India services are nothing less than a calculated insult to the honour of India and the self-respect of Indians. There are other provisions of Part VIII dealing with the Federal Railway Authority which invite comment but I refrain from making any as anything like a detailed consideration is not possible within the limits of this thesis and enough has been said to show how utterly obnoxious and unacceptable those provisions are.

But more has to be said on some of the other powers of the Governor-General acting in his discretion or exercising his individual judgment. In particular, attention should be directed to the provisions of the Act which prohibit ' commercial discrimination.' In industry, trade and commerce the British Empire is not a unit. Every one of the dominions can and does act in its own interest and freely penalises British imports, whether with or without ' preference.' If England tried to force on any of them the products of her industry, there will be the only answer : SECESSION. But India is treated on a different footing. In one word, England considered India to be a ' plantation ' (*Ranade*). Raw materials were to be produced here and shipped to England for manufacture into finished articles to be consumed by India herself to the immense benefit of England. There has of late been some change for the better but only *some*. The old idea persists and attempts are regrettably frequent to discourage or at least to avoid the encouragement of manufacturing industries in India under Indian control. British capital and British enterprise have long been in adverse possession of too much of Indian trade and industry to

be good for the country. One of the principal objects of Indian nationalists in seeking for self-government has been at least to minimise exploitation and to facilitate the development of Indian industry and the expansion of Indian commerce. It is this very aim that the excessively commercially-minded British have effectually frustrated by inserting in the Act provisions that prohibit ' discrimination ' in favour of Indian enterprise. That this is by no means an exaggeration of the truth will be evident from what follows.

No federal or provincial law may discriminate against British subjects domiciled in the United Kingdom or Burma or companies incorporated, whether before or *after* the passing of this Act, by or under the laws of the United Kingdom or Burma, and a law shall be invalid to the extent it contravenes this prohibition. None of them shall be liable to greater taxation than if they were domiciled in British India. No Indian company may get exemption from, or preferential treatment in respect of, taxation without the same being given to United Kingdom companies. All requirements or conditions relating to or connected with the place of birth, race, descent, language, religion, domicile, residence, or duration of residence of members of the governing body of a company, or of the holders of its shares, stock, debentures, debenture stock or bonds, or of its officers, agents, or servants, shall be the same in regard to Indians and to British subjects domiciled in the United Kingdom or India.

As if all this were not enough, special provisions are inserted in the Act which will effectively discourage the development of Indian shipping and aircraft. It is notorious that such Indian shipping as there was at the time the British took possession of India and for some time thereafter was destroyed by the competition of British shipping, and by the advance of science. And the British Government has systematically neglected higher science education in India. Not even the Islington Commission's recommendation in this behalf has moved it to action in the long space of twenty-two years. Students of Indian economic history will not need to be told by what means and with

what success wealthy, established British shipping companies frustrated periodical efforts made by enterprising Indians to develop an Indian shipping industry. Rate-wars were very effectual in this regard. Let anyone read what the non-political industrial magnate, perhaps the greatest that India has produced—the late Mr. J. N. Tata—endeavoured to do and failed to do in his effort to rehabilitate in a small way the Indian shipping industry, all on account of the unfair tactics of the British India Steam Navigation Company, the younger sister of the Peninsular and Oriental Steam Navigation Company,[1] and say what is the conclusion that must inevitably be drawn. After Mr. Tata smaller men made efforts similar to his in Madras, Bombay and Bengal. Their experiences were not less discouraging than those of the great Mr. Tata. Some years ago Mr. Haji introduced a Bill in the Legislative Assembly to preserve for Indian shipping India's coastal trade. But his Bill was killed by the hostility of British commercial interests engaged in the exploitation of India, backed by the Government of India. During the last two years the attempt has been renewed to obtain some protection for the Indian shipping industry by means of a Bill more modest than Mr. Haji's promoted by—by whom ?—the British Government's pet, Sir Abdul Halim Ghuznavi in the Assembly and sponsored by the Hon. Mr. Prakash Narayan Sapru—the worthy son of a distinguished father—in the Council of State. It met with no better fate, thanks again to the combined hostility of the exploiting interests and their guardian-angel, the Government of India. The Indian Mercantile Marine Committee, appointed by the Government itself some years ago, made certain recommendations which would have had the effect of stimulating to some extent the Indian shipping industry. But the Committee's parent, the Government of India, consigned at least the more important of its recommendations to its capacious waste-paper basket. The Government of India set up another committee earlier still, the External Capital Committee. Its recommendations shared no

1 A full account will be found in Mr. Harris's admirable biography of this great philanthropist, merchant-prince and captain of industry.

better fate. And the provisions of the present Government of India Act run directly counter not only to India's requirements and Indians' wishes but to the recommendations of the Government's own committees; just as the recommendations of the Skeen Committee in favour of Indians in relation to military policy were dismissed without courtesy, due, perhaps, to the unfortunate circumstance that, in the language of the Simon Commission, it included a majority of non-official Indian gentlemen. It is not for nothing that so genuine an admirer of England as the late Lord Sinha uttered the warning that where financial interests were involved, the British should not be trusted. Nor for nothing that an English writer himself summed up British character in the telling phrase " always the purse, often the brain, seldom the heart." When during the non-co-operation campaign of 1931 Mr. Gandhi used to plead for a " change of heart " on the part of Britain in relation to India, an acute and sympathetic writer, Mr. J. T. Gwynne, who came on behalf of the *Manchester Guardian* to study conditions here, wrote that Mahatma Gandhi's demand was unreasonable as " we can change the constitution, how can we change our heart ? "

I venture to describe the Government of India Act, 1935, as the anti-India Act. I feel when I recall and reflect upon all that the Government of India did, has done, and is doing, and all that it refused, has refused, and is refusing to-day in respect of fiscal and commercial policy, I feel with some bitterness that the Government of India at least in these matters may not incorrectly or unjustly be described as the Government *against* India. Mr. Gokhale in one of his memorable speeches in the old Indian Legislative Council, speeches which will live for as long as Indian politics is studied, made a comparative description in language lucid and impressive of which he alone was capable, of what the people of Japan owed to their Government for their material progress, and how the people of India are to contend at every step against their Government in their efforts to achieve

some little progress. This is the age-old difference between a national and a foreign government. Apart from the all-important consideration that self-government is the birthright of every people and that without it their honour and self-respect cannot be satisfied, a very practical and very powerful reason for the effort of India's children to achieve home rule, to be in their Motherland what other peoples are in their respective countries, was and is to repair as far as possible the great material injury which India has suffered in consequence of British policy. Let no one make a mistake about this. Let anyone who may suspect that this is at least an over-statement, procure copies of and read Dadabhai Naoroji's *Poverty and un-British Rule in India,* Mr. William Digby's *'Prosperous' British India,* Mr. R. C. Dutt's *India under Early British Rule* and *India in the Victorian Age,* and also *Some Economic Aspects of British Rule in India* by Mr. G. Subramania Iyer, and I am confident that he will not hold me guilty of exaggeration. Among many other disappointments produced by the Government of India Act, 1935, are its astounding provisions to safeguard British exploiting interests and to put obstacles in the way of Indian attempts at industrial development and commercial expansion. When, in the first decade of the present century, a company was registered in London under the style and title "India Development, Limited," Mr. Dadabhai Naoroji wrote in the London Press that if the promoters regarded truth, they should change the name of the company to "Exploitation of India, Unlimited."

To come back to ships and aircraft, I need not do more than transcribe Section 115 of the Act to carry conviction to the most reluctant, the most charitable Indian mind, and to at least a few of the still fair-minded British minds, that there is no defence which can be uttered of the provision except on the footing that India is first for Britain and the British and only next, and only to the extent compatible with this, for her own children. The following is the relevant section :

115.—(1) No ship registered in the United Kingdom shall be subjected by or under any Federal or Provincial Law to

any treatment affecting either the ship herself, or her master, officers, crew, passengers or cargo, which is discriminatory in favour of ships registered in British India, except in so far as ships registered in British India are for the time being subjected by or under any law of the United Kingdom to treatment of a like character which is similarly discriminatory in favour of ships registered in the United Kingdom.

(2) This section shall apply in relation to aircraft as it applies in relation to ships.

(3) The provisions of this section are in addition to and not in derogation of the provisions of any of the preceding sections of this chapter.

Right truly did Lord Curzon say in a speech addressed to the British planters in Bihar that administration and exploitation were the two parts of Britain's work in India and complementary of each other. I will conclude this part of my observations by the compendious description of this preposterous section of the Act and of its allied provisions by the single word *sickening*.

CHAPTER XVII

Burma, Aden and Subsidized Provinces

UNDER the Montagu Act there were nine Governor's provinces. Under the present Act their number is eleven. The North-West Frontier Province was made a Governor's province before the Act of 1935 was passed, while under the Act Burma has been separated from India, and Sind and Orissa, by separation respectively from Bombay and Bihar, have been made two Governor's provinces. Besides Burma, Aden has been separated from India.

The separation of both Burma and Aden was effected without adequate regard for Indian interests and without opportunity being given to Indians fully to state their case. Nor can it be thought that Indian interests are adequately safeguarded for the future. Burma was conquered by Britain with Indian money and with the aid partly of Indian soldiers. It is remarkable that Britain acquired empire in India wholly at the expense of Indians themselves. When the East India Company was abolished by Act of Parliament, the Indian taxpayer was made liable for the annuities to be paid to the dispossessed shareholders. All of Britain's wars not only in India but in and with neighbouring countries had to be financed by the Indian taxpayer ; with the only exception that due to Gladstone's advocacy a comparatively paltry contribution was made by Britain towards the cost of the second Afghan War wantonly waged by the Tory combination of Lords Beaconsfield, Salisbury and Lytton. While the Government of India has been authoritatively described as and is in fact a subordinate branch of the Government of England and while the army in India is kept at a strength determined with reference to the needs of England's empire, the impoverished and the overburdened Indian taxpayer is mulcted in its entire cost. Repeated protests have been made not only by the people but by the Government of India against this injustice. But except for two

recent utterly inadequate contributions towards capitation charges and mechanization, all protests have gone unheeded. The amazing spectacle was witnessed in the House of Lords in 1893 when an ex-Viceroy, Lord Northbrook, raised the question, of a Secretary of State admitting the injustice but pleading against the re-opening of the question on the ground that every time the India Office made an attempt to get relief, the answer of His Majesty's Government was to make India pay still more ! The truth is that in respect of army and finance the real masters of India are not the Government of India and the Secretary of State but the British Treasury, the British War Office and the City of London.

I have permitted myself to refer to this in this chapter to establish the point that while India was made to pay for the conquest of Burma as well as to meet all deficits in Burma's budget, very insufficient (if any) attention was given to India's point of view in the decision for separation and in the arrangements of the redistribution of financial burdens between the two countries. The people of India have not even the consolation that Indians settled and doing business in Burma can be sure of just treatment. During the last twelve or thirteen years the position of Indians in Burma has steadily deteriorated and if the past be a guide to the future, there is good reason to fear that the deterioration will be progressive.

Neither can Indian enterprise in Aden be confident of equitable treatment in the future administration of that colony. An assurance was given that the central legislature of India would be afforded an opportunity of discussing the subject before separation was effected, but that particular assurance only proved to be an addition to large numbers of other assurances which were not respected in fact.

While the North-West Frontier Province was always a burden to the rest of India, the cost of its administration has necessarily risen much higher, due to its new status. As it is the gateway to India from the north-west, it has a special military importance and this was urged as the justification for

a contribution from the central revenues. But then the central legislature was competent to discuss its affairs and to see that the contribution was not more than necessary and also that the administration was carried on with justice and efficiency. Now, however, the central legislature has no longer this liberty while the contribution has been materially increased.

Such special reason as there might be for a subsidy to the North-West Frontier Province does not exist in the case of any other. Yet, Sind and Orissa have been constituted autonomous Governor's provinces with the knowledge that they were deficit provinces and that they would remain as such for as long as could be foreseen. And the Secretary of State and the Government of India between themselves decided to subsidize them from the central revenues without the central legislature being given an opportunity of discussing the principle that was involved. There are here no military reasons as were urged in the case of the Frontier Province when it was carved out of the Punjab by Lord Curzon's Government. And the only reason is that the people of Sind and of Orissa wanted to be separate from Bombay and Bihar respectively. The people of other provinces urged that satisfaction might be given to them but not at the expense of the rest of India. The justice of this plea was never questioned. But the plea itself was wholly disregarded and the British Government went their way as if the general taxpayer were *non est.*

The Andhras of Madras have been agitating for separation from the rest of that presidency and for the creation of an autonomous Andhra province. The agitation is a quarter of a century old. But the British Government have never paid any serious attention to it. The question cannot be avoided whether this is because Andhra politicians joined the Congress in large numbers and took a very active part in the non-co-operation and civil disobedience movements and therefore it was thought they must be punished. But Orissa has answered the British by returning a Congress majority to its legislature at the very first elections held under the Act while Sind is not free either from the

influence or from the activities of Congress ; why, even the North-Western Frontier Province has now a Congress ministry.

The whole policy of subsidized provinces is vicious and fundamentally wrong. Perhaps the more philosophic among India's public men will dispose of the matter as being after all no more than an addition to many things which are both vicious and fundamentally wrong which they have got to tolerate under a government which is not national.

C. Y. C.

INDEX